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S. J. Fisher

THE
MAGISTRATE'S ACTS

OF 1869

ANNOTATED

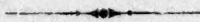
FOR THE USE OF MAGISTRATES

WITH

**FORMS, PRECEDENTS AND AN INTRODUCTION.
TO THE LAW OF EVIDENCE.**

BY WM. H. KERR, ESQ.

BARRISTER-AT-LAW.



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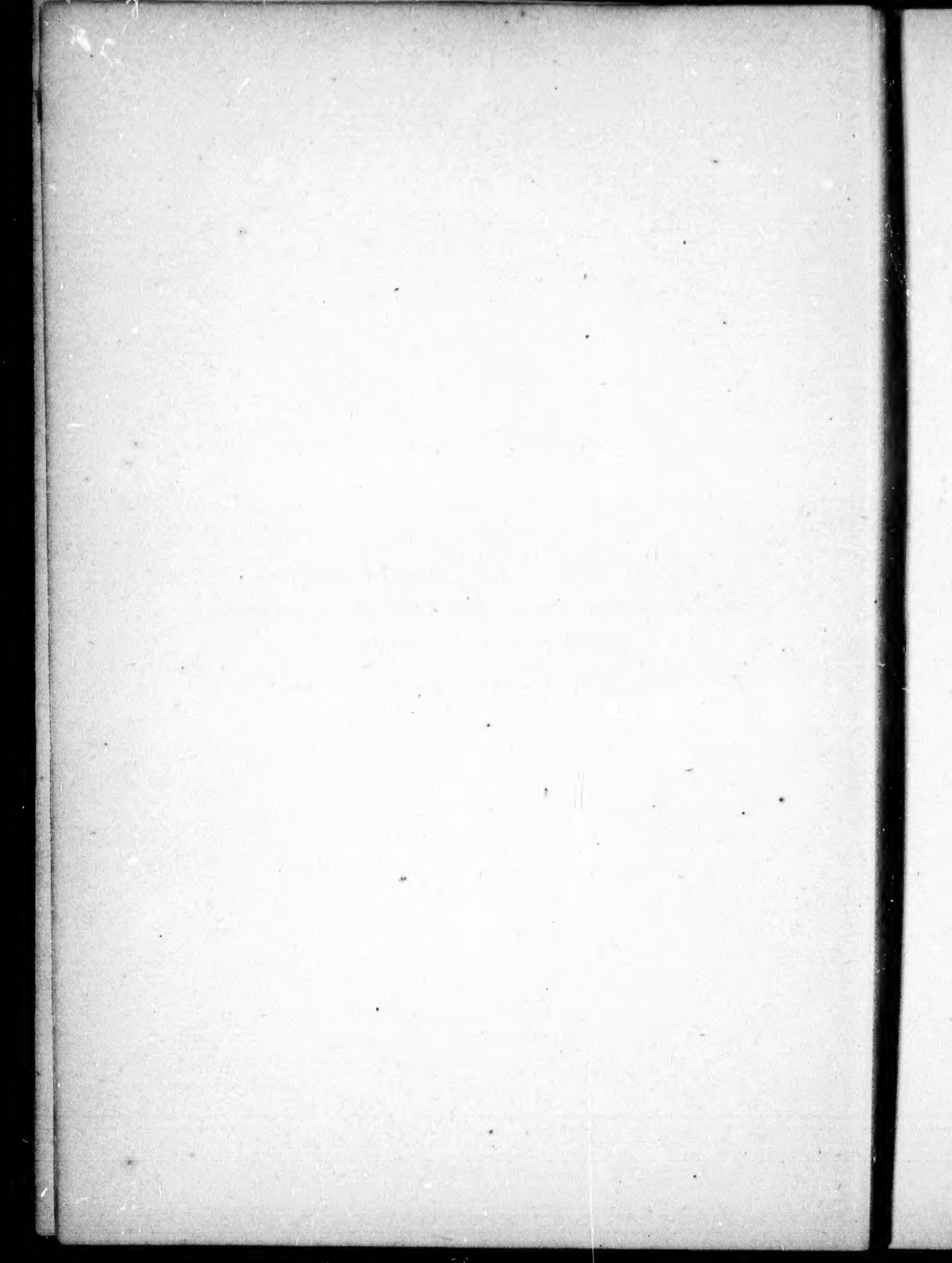
TO

CHARLES J. COURSOL, Esq.,

JUDGE OF THE SESSIONS OF THE PEACE FOR THE CITY OF MONTREAL.

THIS VOLUME IS INSCRIBED,

AS A TOKEN OF RESPECT FOR HIS KNOWLEDGE OF CRIMINAL LAW,



PREFACE.

The difficulty experienced by Magistrates in the country parts of the Dominion, in obtaining any work treating specially of their duties, has long been known to the members of the Bar. Within the past thirty years, a few books have been published with the idea of obviating the difficulty, but so many alterations have been made by recent statutes in the law as it existed at the time of such publications, that but little apology is needed for the appearance of this work.

In annotating the sections of the different statutes now in force, the writer has striven to collect from the English works every thing that seemed likely to be of use, and he has not hesitated to embody in this volume, the observations of the different authors, when they seemed to him appropriate to the treatment of the subject under consideration. He has largely made use of "The Practice of Magistrates' Courts," by T. W. Saunders, Esq., "The Magisterial Synopsis," and "The Magisterial Formulist," by George C. Oke, Esq. To the latter gentleman's works he has been greatly indebted, and trusts that he will be pardoned for having brought Mr. Oke as an authority of great weight before the Canadian Public.

After that portion of the work treating of Summary Convictions and orders had gone through the press, an Act in amendment of the law as it then existed, was passed by the Dominion Parliament and it became necessary to note the changes thereby made. The amending Act will be found in

the Addenda pp. 381-388. The changes thereby effected are chiefly with regard to appeals and are commented on at pp. 387, 388.

In the Addenda will also be found the clauses of the Statutes of the different Provinces, having reference to the duties of Magistrates, saved from repeal by Schedule B of 32 & 33 Vic. c. 36.

To furnish the law as it exists, with the necessary forms, and such simple instructions as will prevent Magistrates from doing injustice to others and from bringing themselves into difficulty, has been the object of the writer. He trusts that he has at least succeeded in producing a work which may be of some benefit to those for whom it was specially written.

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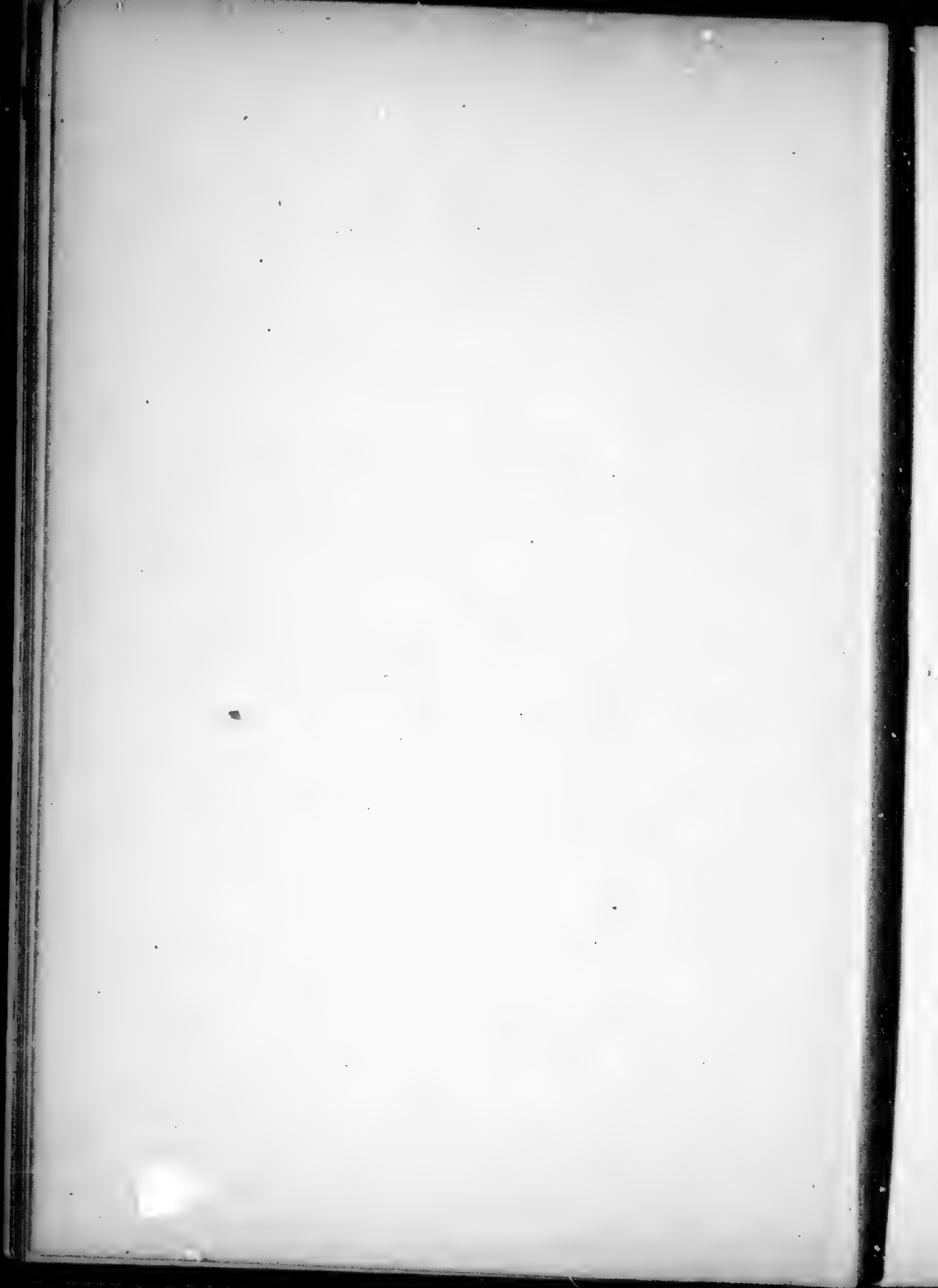
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ERRATA.

Page 35, line 26 for "be" read "are."

" 70, line 22 erase "that."

" 147, line 4 read "31 Vict. c. 1. s. 7, subs. 14,)" for "(Vict. 3. c. 1. s. 7.)"

" 150, lines 6 and 15 for "Okes Syn. iii)" read ("Okes Syn. p. 111.)"

" 153, lines 4 and 5 for "5 D & L." read "5 D & R."

" 187, line 21 for "Hutton" read "Hulton."

" 187, line 31 for "Charler vs. Greene et al." read "Charter vs. Graem et al."

" 188, line 30 for "(M. L.)" read "(M. C.)"

" 189, line 5 for "R. James Cald." read "R. v. James Cald."

" 192, line 9 for "Hutton" read "Hulton."

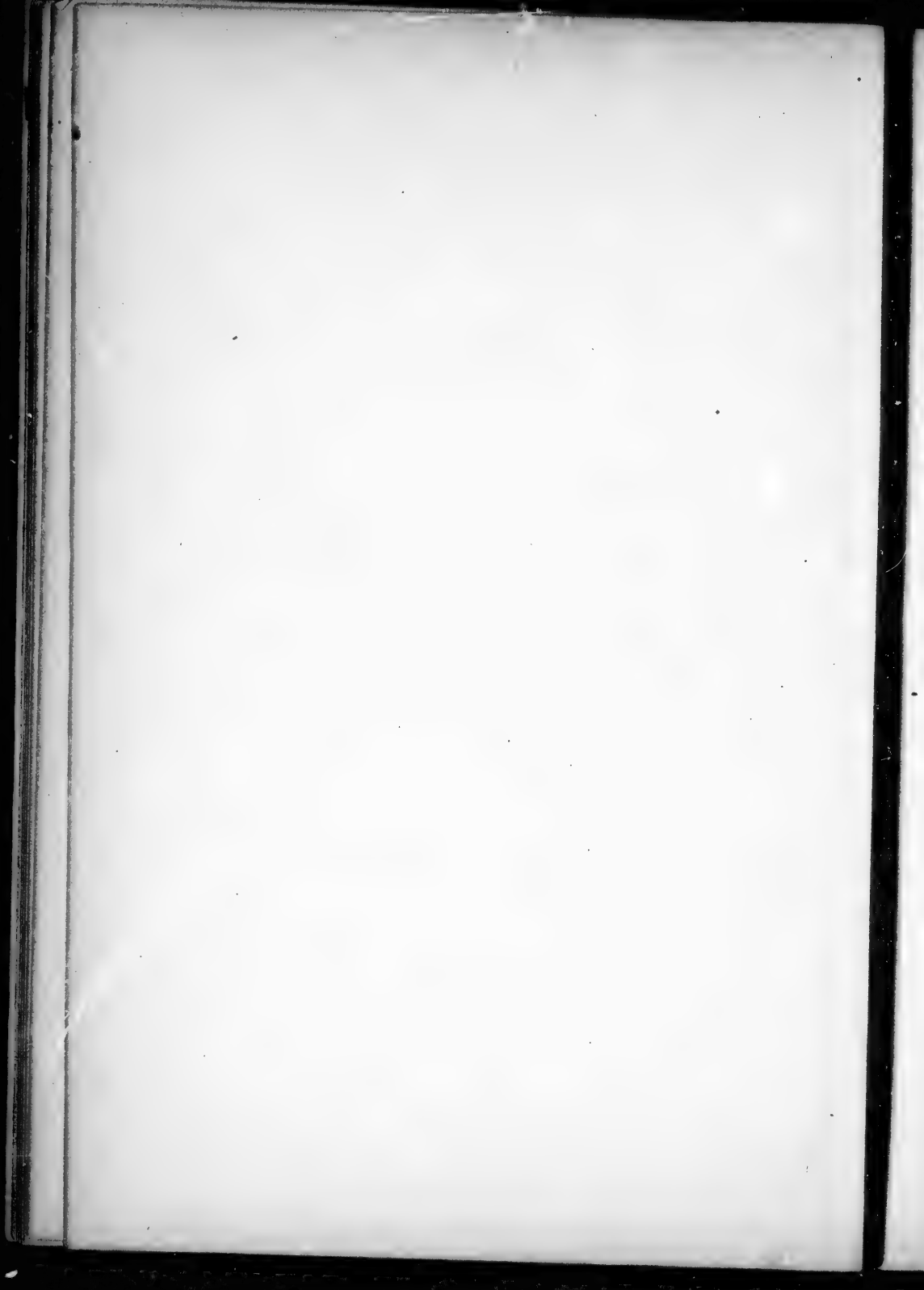
" 216, line 28 for "2 H. & H." read "2 H. & N. 354."

" 230, line 31 for "be" read "is."

" 331, line 4 for "Aesented" read "Assented."

" 347, line 9 for "divers Act" read "divers Acts."

" 388, line 13 for "after the making" read "from the making"



INTRODUCTION.

Before entering upon the consideration of the Statutes of Canada, having reference to the duties of Justices of the Peace, with respect to indictable offences and summary convictions, it is necessary to make some preliminary observations upon,

1. Justices of the Peace and how appointed.
2. The nature of the duties of Justices.
3. Jurisdiction of Justices as to Locality, interest, &c.
4. Evidence before Justices.

I.

JUSTICES OF THE PEACE AND HOW APPOINTED.

For a long time previous to the Statute 1 Edw. 3. st. 2. c. 16, there were peculiar officers at common law charged with the maintenance of the public peace. Of these some had this power annexed to other offices which they held; others had it merely by itself and were thence named *custodes* or *conservatores pacis*. The *custodes* or *conservatores pacis* are now superseded by the modern justices. (2 Stephens Com. p. 648; Stone's P. S. pp. 1 & 2; Paley on Con. p. 2). The *custodes* or *conservatores pacis* were chosen by the freeholders at large; agreeably to that principle of popular election in the choice of magistrates which pervaded the Anglo Saxon institutions, and seems from the earliest times to have characterized the policy of all those northern nations from which they emanated (Paley on Con. p. 2; 2. Stephens Com. p. 649). By the Statute of 1 Edw. 3, already referred to, it was ordained in parliament that for the better maintaining and keeping of the peace in every county, good men and lawful, which were no maintainers of

evil or barrators in the county, should be assigned to keep the peace. In this way the election of the *conservatores pacis* was taken away from the people and given to the King; this assignment being construed to be by the kings commission (2. Stephens Com. 649; Stone, 2.). But they were still called but conservators, wardens, or keepers of the peace, till the Statute 34 Edw. 3, c. 1, gave them the power of trying felonies, when they acquired the more honorable appellation of justices of the peace.

For many years however after the passing of the 1 Edw. 3. their powers and duty were restricted simply to guarding and taking security for the preservation of the peace. In process of time however the power of hearing and determining offences was conferred upon them, which enabled them according to the course of the common law to proceed in all such cases by the method of inquisition and verdict—the justices were therefore under the necessity of holding sessions and assembling jurors for the trial of even minor offences. But the inconvenience attendant upon the system, forced upon the Legislature a conviction of the necessity of vesting in justices of the peace authority to try summarily without the intervention of a jury, and to sentence persons guilty of minor offences. The earliest statutes granting such powers are the 12 Ric. 2. c. 2, in the case of forcible entry, the 13 Hen. 4. c. 7, in case of riot, and the 2 Hen. 5. s 1. c. 4, by which on the confession of the party charged, the justice could punish as if convict by inquest. The 17 Edw. 4. c. 4, would also seem to grant the power of summary conviction in cases of fraud in making tiles. The 11 Hen. 7. c. 3, is the first statute which gave general powers of summary conviction upon information (for the king) of all offences, short of felony against any statute then in being. The last mentioned statute was however repealed by the 1. Hen. 8. c. 6.

The earliest statute upon which a summary conviction by a justice is on record, or of which a precedent is found in the books, is that of 33 Hen. 8. c. 6, against the practice of carrying daggs or short guns (Paley p. 10).

Previous to the reign of James I.—the power of summary conviction by a justice did not exist in more than four or five cases, but in that reign great additions were made to their powers, and now a days in a great variety of cases, both in England and Canada, Justices of the Peace exercise a very extended jurisdiction, not only over minor offences punishable on summary conviction, and preliminary investigations into the gravest crimes, but also, with the consent of the accused, over crimes of a deep dye which by recent statutes they have power to try in a summary manner.

Appointment of Justices.

Justices of the Peace in England are appointed by special commission under the Great Seal, the form of which was settled by all the judges A. D. 1590 and continues with little alteration to this day. (1)

(1) "VICTORIA, by the grace of God, &c., to—greeting (a).

"Know ye, that we have assigned you jointly and severally and every one of you our justices to keep our peace in our county of —; and to keep and cause to be kept all the ordinances and statutes for the good of our peace, and for preservation of the same, and for the quiet rule and government of our people made, in all and singular their articles, in our said county (as well within liberties as without), according to the force, form, and effect of the same;—and to chastise and punish all persons that offend against the form of those ordinances or statutes, or any one of them, in the aforesaid county, as it ought to be done, according to the

(a) If any gentleman is afterwards added to the commission, which is done by appointment from the Lord Chancellor, the clerk of the peace sends the commission to London to the Crown Office at Westminster, where the name is inserted, and the commission resealed.

form of those ordinances and statutes ; — and to cause to come before you, or any of you, all those who, to any one or more of our people concerning their bodles or the firing of their houses, have used threats, to find sufficient security for the peace or their good behaviour, towards us and our people ; and if they shall refuse to find such security, then them in our prisons until they shall find such security to cause to be safely kept.

“ We have also assigned to you, and every two or more of you (of whom any one of you the aforesaid A. B., C. D., &c., we will shall be one) our justices to inquire the truth more fully, by the oath of good and lawful men of the aforesaid county, by whom the truth of the matter shall be the better known, of all and all manner of felonies, poysonings, inchantments, sorceries, art magick, trespasses, forestallings, regratings, ingrossings (*b*) and extortinos whatsoever ; — and of all and singular other crimes and offences, of which the justices of our peace may or ought lawfully to inquire, by whomsoever and after what manner soever in the said county done or perpetrated, or which shall happen to be there done or attempted ; — and also of all those who in the aforesaid counties in companies against our peace, in disturbance of our people, with armed force have gone or rode, or hereafter shall presume to go or ride ; — and also of all those who havd there lain in wait, or hereafter shall presume to lie in wait, to maim or cut or kill our people ; and also of all victuallers, and all and singular other persons, who in the abuse of weights and measures, or in selling victuals, against the form of the ordinances and statutes or any one of them therefore made for the common benefit of England, and our people thereof, have offended or attempted, or hereafter shall presume in the said county to offend or attempt ; — and also of all sheriffs, bailiffs, stewards, constables, keepers of gaols, and other officers, who in the execution of their offices about the premises or any of them, have unduly behaved themselves, or hereafter shall presume to behave themselves unduly, or have been or shall happen hereafter to be careless, remiss, or negligent in our aforesaid county ; — and of all and singular articles and circumstances, and all other things whatsoever, that concern the premises or any of them by whomsoever and after what manner soever in our aforesaid county done or perpetrated, or which hereafter shall there happen to be done or attempted in what manner soever ; — and to inspect all indictments whatsoever so before you or any of you taken or to be taken, or before others late our justices of the peace in the aforesaid county made or taken, and not yet determined ; — and to make and continue processes thereupon against all and

(*b*) The offences of forestalling, regrating, and ingrossing were abolished by the 7 & 8 Vict. c. 24.

singular the persons so indicted, or who before you hereafter shall happen to be indicted, untill they can be taken, suryender themselves, or be outlawed;—and to hear and determine all and singular the felonies, poysonings, inchantments, sorceries, art magick, trespasses, forestallings, regratings, ingrossings, extortions, unlawful assemblies, indictments aforesaid, and all and singular other the premises, according to the laws and statutes of England, as in the like case it has been accustomed, or ought to be done;—and the same offenders and every one of them for their offences by fines, ransoms, amerciaments, forfeitures, and other means, as according to the law and custom of England, or form of the ordinances and statutes aforesaid, it has been accustomed, or ought to be done, to chastise and punish.

“Provided always, that if a case of difficulty upon the determination of any of the premises before you or any two or more of you shall happen to arise, then let judgment in nowise be given thereon before you or any two or more of you, unless in the presence of one of our justices of the one or other bench, or of one of our justices appointed to hold the assizes in the aforesaid county.

“And therefore we command you and every of you, that to keeping the peace, ordinances, statutes, and all and singular other the premises, you diligently apply yourselves; and that at certain days and places which you or any such two or more of you as is aforesaid shall appoint for these purposes, into the premises ye make inquiries; and all and singular the premises hear and determine, and perform and fulfil them in the aforesaid form, doing therein what to justice appartains, according to the law and custom of England; saving to us the amerciaments and other things to us therefrom belonging.

“And we command by the tenor of these presents our sheriffs of the said county of—, that at certain days and places, which you or any such two or more of you as is aforesaid shall make known to him, he cause to come before you or such two or more of you as is aforesaid, so many and such good and lawful men of his bailiwick (as well within liberties as without), by whom the truth of the matter in the premises shall be the better known and inquired into.

“Lastly, we have assigned you the aforesaid A. B. keeper of the rolls of our peace in our said county; and therefore you shall cause to be brought before you and your said fellows, at the days and places aforesaid, the writs, precepts, processes, and indictments aforesaid, that they may be inspected, and by a due course determined as is aforesaid.”

“In witness whereof we have caused these our letters to be made patent. Witness ourself at Westminster, &c.

Dalton defines Justices of the Peace as "Judges of Record appointed by the King to be Justices within certain limits for the conservation of the peace; and for the execution of divers things comprehended within their commission, and within divers statutes committed to their charge." Dalton p. 6.

Basis of Powers.

The power, office, and duty, of a Justice of the Peace depend on his commission, and on the several statutes which have created objects of his jurisdiction. His commission first empowers him singly to conserve the peace, and thereby gives him all the power of the ancient conservators at the common law, in suppressing riots and affrays, in taking securities for the peace, and in apprehending and committing felons and other inferior criminals. (2 Stephens Com. p. 654).

It is to be remarked that in the heretofore Province of Canada, the practice has been, not to mention in commissions of the Peace the powers thereby conferred on Justices of the Peace. The commission being simply addressed to the persons assigned by name, and then containing the following: "Know ye &c., we have assigned you jointly and severally and every one of you to keep our Peace in our District of Montreal, in that part of the Province of Canada called Lower Canada, with all and every the powers, authority, privileges, and advantages to the Office of Justice of the Peace of right and by law appertaining. And we do hereby by revoke and make void all former commissions."

It may be a question whether under such a commission as the one in use heretofore in Canada, Justices of the Peace derive any power from their commission, it merely making them officers to carry out the provisions of statutes, creating duties for and granting powers to, Justices of the Peace.

In the several Provinces of the Dominion the dignity of Justice of the Peace can alone be conferred, it appears, by the Local Government. (1)

Qualification.

The subject of property qualification is one now governed by the local law of the Province, within which the Justice of the Peace holds his commission, and the oath or oaths to be taken before acting are also prescribed by local laws.

Ex-officio Justices.

The dignity of Justice of the Peace is also attached to certain offices: Judges of the Superior Courts of law, Recorders, Mayors, Judges of Sessions are in many instances, by virtue of their offices, Justices of the Peace for certain localities.

It is to be remembered that this work does not treat of the duties of Justices of the Peace under acts of Local Legislatures, but is confined solely to a consideration of their duties and powers under the acts of the Parliament of Canada.

II.

THE NATURE OF THE DUTIES OF JUSTICES OF THE PEACE.

Acts ministerial or judicial.

Ministerial acts.

Judicial acts.

The acts of Justices of the Peace in the discharge of their duty are either ministerial or judicial. Receiving informations or complaints for indictable offences, and also for offences or matters determinable in a summary way; causing the party charged to appear and answer either by summons or by war-

(1) The Local Governments possess apparently the right of nomination; but vide Paley p. 48, being specially officers of the criminal law it would seem that the right to appoint them should vest in the Dominion Government.

rant; causing, in the case of summary convictions or orders, such conviction or order to be executed by warrant of distress or of commitment, are ministerial acts. Taking the examinations and bail, or committing for trial on charges for indictable offences (*Linford vs. Fitzroy* 3. N. S. C. pp. 443, 444; contra *Okes Syn.* p. 5), the trial of offenders, the hearing and adjudication, upon informations for summary offences, and upon complaints for non payment of money under acts giving them summary jurisdiction, and in fact all acts by them done whereby they decide between rival claims, are judicial acts.

III.

JURISDICTION OF JUSTICE AS TO LOCALITY, INTEREST, &C.

Basis of Jurisdiction.

The jurisdiction of Justices whether for Districts, Counties, Cities, &c., in particular matters is derived from their commission (2) and numerous statutes (*Okes Syn.* p. 7; *Dickensons Guide to the Q. S.* 59.)

By the 32 & 33 Vic. c. 30, the authority of Justices of the Peace with respect to the preliminary examination into indictable offences of all kinds is defined (*Vide post*).

By the 32 & 33 Vic. c. 31. general rules and orders for their guidance in summary informations and complaints, over the subject matter of which the Parliament of Canada has jurisdiction, are laid down (*Vide post*).

By the 32 & 33 Vic. c. 32 & 33, extensive powers are conferred in Ontario and Quebec, upon Recorders, Judges of County Courts being Justices of the Peace, Commissioners of Police, Judges of the Sessions of the Peace, Police Magistrates, District Magistrates and other functionaries or tribunals invested on the 22nd. June 1869 with the powers vested in a

(2) See ante p. 6.

Recorder by cap. 105 of the Consolidated Statutes of Canada, and any functionary or tribunal with power to do alone such acts as are usually required to be done by two or more Justices, and in Nova Scotia & New Brunswick upon Commissioners of Police, and any functionary, tribunal or person invested with power to do alone what is usually required to be done by two Justices to insure the prompt and summary administration of criminal justice in certain cases. (Vide post).

By the 32 & 33 Vic. c. 35, still more extended powers are granted to any County Judge, Junior or Deputy Judge authorised to act as Chairman of the General Sessions of the Peace in Ontario; and to Judges of Sessions, District Magistrates in Districts wherein there are no Judges of Sessions, and Sheriffs of Districts wherein there are neither Judges of Sessions nor District Magistrates. (Vide post).

It is to be remembered that the provisions of the last mentioned act apply only to the Provinces of Ontario and Quebec.

Summary Convictions.

Number of Justices required to hear and determine.

Power of one Justice to receive information and to issue warrant of distress.

Power quoad indictable offences.

In summary convictions, the jurisdiction of Justices is wholly given to them by Statute. (Paley p. 15; Okes Syn. p. 7.) If by the Act or Law upon which the complaint or information is framed it be provided that it shall be heard and determined by two or more Justices, then it must be heard by the number, at least, of Justices therein specified. (Vide 32 & 33 Vic. cap. 31. sec. 27. and post). But if there be no such provision in such Act or Law then it can be heard and determined by one Justice (Vide 32 & 33 Vic., cap. 31. sec. 28 post). Where power is given to one justice to do

an act, two or more can join in doing it. One Justice can receive an information and complaint and enforce any summary conviction or order made by another or other Justices (32 & 33 Vic. cap. 31, sec. 85 & 86 post), and can do every act out of sessions relative to any indictable offence, save admitting, after hearing the witnesses, a person accused of felony, to bail for his appearance for trial. (32 & 33 Vic. cap. 30 sec.).

Primary jurisdiction.

In indictable offences.

In summary convictions and orders.

The primary jurisdiction of Justices extended solely over offences, committed in the Division for which they were appointed. In indictable offences, now a days a Justice has jurisdiction to take the preliminary examination when the offence has been committed in the Division for which he has been appointed, or when the party accused is therein or is suspected to be therein (32 & 33 Vic. cap. 30. sec. 1 post.) In summary convictions and orders it would appear as if the offence or act complained of need not have been committed or done within the Division for which the Justice has been appointed, so long as the person accused is within such Division. (but vide 32 & 33 Vic. c. 31 s. 1 & observations thereon post).

Next Justice.

Where a statute refers the matter to the next Justice or any two Justices, no other but those answering that description or those having express jurisdiction by Act of Parliament can take cognizance of the matter, (Sanders case 1, Saund. 263 ; Re, Peerless 12. Q. B. 643.)

Place where authority can be exercised.

Out of his Division.

Generally speaking, the place where the Justices can exer-

cise their authority must be within the territorial Division for which they are appointed to act. (Dalt. c. 6.) It is very doubtful whether a justice can out of his Division receive an information to found a subsequent proceeding before himself of a penal nature, and it is clear that any coercive or judicial act would be altogether invalid unless done within the Division. (Dalt c. 25, 2 Hawk c. 8. s. 44. Paley p. 18).

JUSTICES INTERESTED IN THE CASE.

Interest renders Justice incompetent.

Liable to attachment for acting.

No Justice of the Peace can act judicially in a case wherein he is himself a party, or wherein he has any direct, or pecuniary interest however small. That no one can be a judge in his own case is a principle pervading every branch of law. (Co. Lit. 141. a; Dalt. c. 173; Dimes vs. Grand Junction Canal Co. 3. H. of L. Cases 759, 785). Every proceeding which bears this objection upon its face is absolutely void, if it do not so appear it is merely voidable. (Dimes vs. Grand Junction Canal Co. supra). A Justice acting when interested, is liable to punishment by attachment. (The Mayor of Herefords case 2 Ld. Raym. 766; 1 Salk. 201. 396; R v. Hoseason 14 East 606).

Duty of Justices when interested in matter at issue.

Justices should refrain from taking part in any matters in which they individually have a personal interest; such as where they are members of a company, or stockholders in a bank, complaining or complained against. Where a Justice upon the trial of a parish appeal, he being a rated inhabitant of the appellant parish was on the bench during the hearing, though he did not vote or give any opinion upon the question or influence the decision, the order of sessions was

held to be invalid by reason of his presence and interference. R v. Justices of Suffolk 21. L. J (N. S) M. C 169 ; Reg. v. O'Grady 7 Cox C. C. 247.)

Exception.

Sometimes however a Justice of the Peace is expressly empowered by statute to adjudicate, although to a certain extent interested in the result of the decision. But great care must be exercised by a Justice interested in a case, ere acting therein as a magistrate, to assure himself that he is so expressly empowered.

Officers prohibited from acting as Justices.

Certain officers are occasionally prohibited from acting as Justices of the Peace. But as the prohibition is one lying within the power of the Local Legislatures, it does not come within the scope of the present work.

OUSTER OF JUSTICES JURISDICTION.

Ouster of jurisdiction on questions of property and title and claim of right to do the act complained of.

Where property or title is in question, the jurisdiction of justices to hear and determine in the cases regulated by 32 & 33 Vic. c. 31 and other cases of the same class of summary matters is ousted, and their hands tied from interfering, though the facts be such as they have otherwise authority to take cognizance of. (R v. Burnaby 2 Ld. Ray. 900 ; 1 Salk. 181 ; R. v. Speed 1 Ld Raym. 583 ; Kinnersley v. Orpe Doug. 499). This principle is not founded upon any legislative provision, but is a qualification which the law itself raises in the execution of penal statutes and is always implied in their construction.

The jurisdiction however is not to be ousted by a mere fictitious pretence of title, or even by the *bonâ fide* claim of

a right which cannot exist at law. (*R v. Doelson* 9 Ad & El. 704; *Hudson v. Macrae* 33 L. J. (N. S) M. C. 95; *Okes* Syn. 31; *Paley* 117-122).

Prohibition issuable in certain cases.

It is said that upon a suggestion of title the Court of Queen's Bench in England, at any time while the conviction remains below, and has not been removed by *certiorari*, will grant a prohibition after conviction to stay the justice from proceeding upon it. (Per Holt C. J. 2 Ld Raym. 901; *Paley* 122 & note (n))

Acts of servant.

The acts of a person's servants under his guidance in asserting a right, would not render them liable to conviction if he be not so liable. (*Reg. v. Thexton & al* 23 J. P. 323).

GENERAL INGREDIENTS TO GIVE JUSTICES JURISDICTION.

The principal requisites or ingredients in general necessary to give justices jurisdiction to exercise their authority are therefore the following :

Jurisdiction as to *place* where offence was committed, matter arose or where accused then is or is suspected to be.

Jurisdiction as to *place* of exercising their authority.

Jurisdiction not to be exercised where Justice is a party, or interested ;

When Justices are prohibited by Statute from exercising.

When Justices are disqualified from acting within their jurisdiction by other causes than interest ;

When their jurisdiction (in all other respects complete) is ousted by a question of property or title.

In addition to these there must be,

Jurisdiction over the *subject matter* within the strict meaning of the commission, or the particular Statute, taking into account all exceptions and exemptions allowable ;

Jurisdiction in respect of the *Justices description* where the authority is delegated to particular justices;

Jurisdiction as to the *time* of offence or matter being prosecuted within the period limited by statute or otherwise;

Jurisdiction as to the *number* required to hear and determine;

Jurisdiction as to the *amount* of forfeiture or penalty compensation and its nature, and costs adjudged to be paid, and the *mode* of their recovery by distress or otherwise, but appropriate to the offence and the Statute;

Jurisdiction as to the term of imprisonment adjudged neither for too short nor too long a period, and the proper condition of its termination.

Jurisdiction should be apparent on written proceedings of Justices.

It is not sufficient that Justices have the jurisdiction in every respect; upon all their written proceedings, especially in those records of their judgments which are final, i. e. convictions and orders returned to the Sessions, as the bad part cannot be severed from the good (*Wilkins v. Wright* 2 C. & M. 191; *Braceys case* 1 Salk 349; *R. v. Corben* 4 Burr. 2218; *R. v. Catherall* 2 Str. 900; 1 T. R. 249) in the case of convictions, though orders may be quashed in part if sufficiently divisible (*R. v. Maulden* 1 M. & R. M. C. 385; *R. v. Robinson* 17 Q. B. 466, 471; *R. v. Green & al.* 20 L. J. (N. S.) M. C. 168 & cases therein cited), every essential ingredient and every material fact necessary to give jurisdiction should appear. (*Okes Syn.* p. 33; *Paley* 140, 141, 148; *Gossett vs. Howard* 10. Q. B. 411, 452; *Peacock. v. Bell* 1 Saund. 74).

EVIDENCE BEFORE JUSTICES.

It is not intended here to enter into a consideration of the whole law of evidence, a very succinct view of the law as to

the competency and examination of witnesses, and the general rules as to oral and other evidence will only be presented, taken in great part from Mr. Okes exceedingly useful work *The Magisterial Synopsis*. This chapter is divided into three parts.

1. The competency and examination of witnesses.
2. General rules as to oral and other evidence.
3. Documentary evidence.

Rules of evidence applicable as well to civil as criminal cases.

Exceptions.

According to the principles of English law it may be said, that there is no difference in the rules of evidence applicable to civil and criminal cases, and that what may be received in one case may be received in the other, and what is rejected in the one ought to be rejected in the other (Abbott J. in *R v. Watson* 2 Star N. P. C. 155), and that a fact must be established by the same evidence, whether it is to be followed by criminal or civil consequences (Lord Melville's case 29 How. St. T. 763), yet the amount of proof to be exacted by justices varies with the nature of the proceedings before them. If it be a preliminary inquiry into an indictable offence, the evidence must raise a strong presumption of the guilt of the party charged to justify the justice in committing him for trial (see 32 & 33 Vic. cap. 30. s 52). In summary penal proceedings the proof of guilt must be full and convincing, while in matters of civil jurisdiction, a mere preponderance of proof will suffice to establish the case. In summary proceedings, the justices are placed in the position of a jury, and the degree of credit to be attached to the evidence, provided it be legally admissible, is exclusively in their consideration and judgment, the defendant being entitled to the benefit of any

doubt which exists in their minds; and therefore, whatever the Court of Queens Bench upon an inspection of the proceedings, would deem sufficient to be left to a jury on a trial, when the evidence was set out on the face of the conviction, was considered by them adequate to sustain the conclusion drawn by the convicting magistrates. Beyond that, the Court would not exercise a judgment upon the credit or weight due to the facts, from which the conclusion was drawn (R. v. Davis 6. T. R. 177, & see Coster v. Nilson 3 M. & W. 411; R. v. Reason 1 T. R. 375; R. v. Bolton 1 Q. B. 66; Saunders. Prac. M. C. 3. Ed. p. 66).

1.—THE COMPETENCY AND EXAMINATION OF WITNESSES.

Objection to credibility not to competency.

It may be considered to be the general and established principle of evidence that objection may be taken to the credibility, but not to the competency, of witnesses; but this rule is subject to some exceptions. Formerly a witness might be objected to on many grounds, as being a party interested in the result of a case; but without mentioning prior acts of the Provincial Parliaments, the Dominion act 32 & 33 Vic. cap. 29, s. 62 provides:

General rule.

“No person offered as a witness shall, by reason of any alleged incapacity from crime or interest, be excluded from giving evidence on the trial of any criminal case, or in any proceeding relating or incidental to such case.”

63 “Every person so offered shall be admitted and be compellable to give evidence on oath, or solemn affirmation, where an affirmation is receivable, notwithstanding that such person has, or may have, an interest in the matter in question, or in the event of the trial in which he is offered

as a witness, or of any proceeding relating or incidental to such case, and notwithstanding that such person so offered as a witness has been previously convicted of a crime or offence."

Husband & wife.

It may be taken for granted that under these two clauses all persons gifted with reason who believe in a Supreme Being, who will punish them either in the present, or in the future, life for perjury, (Powell 19, 21) (save the accused and his wife, on a charge of an indictable offence not committed by him on her person, and the defendant and his wife in the case of a summary prosecution not founded upon a personal injury to her), are competent witnesses.

In England the 14 & 15 Vic. c. 99 s. 2 & 3 rendered all parties to any suit or proceeding in any Court of Justice, or before any person having authority to hear, receive, and examine evidence, competent witnesses, save the party charged in any criminal proceeding. (Summary convictions being therein included). It was thereby moreover expressly provided, that nothing in the said act contained, should render a person compellable to answer any question tending to criminate himself or herself, or should in any criminal proceeding, render any husband competent or compellable to give evidence for, or against his wife, or any wife competent or compellable to give evidence for, or against her husband.

In cases of high treason and personal injury committed by one upon the other, husband and wife are not excluded from giving evidence for or against each other. (Okes Syn. 66 & note 82).

Wife of one accused competent witness in certain cases against other accused.

The wife of one of several persons accused of a joint offence can, under certain circumstances, be examined as a witness

for the other persons accused. (*R. v. Bartlett & al* 8. J. P. 329; *R. v. Moore* 1 Cox C. C. 59; *R. v. Sills* 1 C. & K. 494).

Where two prisoners were tried for a joint offence, and one pleaded guilty, the wife of the one so pleading was admitted as evidence against the other prisoner. (*Reg. v. Thompson* 3 F. & F. 824).

Questions tending to subject witness to penalty or punishment.

A person can not be compelled to answer any question, tending to subject him to some penalty or punishment (*Reg. v. Boyes* 1 B. & S. 311), but if he chooses he is competent to do so. In the recent case of *Reg. v. Butterfield* 11 Law T. N. S. 448, it was held that a witness was not obliged to answer a question tending to the forfeiture of a lease. (See *Taylor on Ev.* 4th Ed. pp. 1236—1248).

The proceeding to obtain a summary conviction by which the defendant may be punished by fine or imprisonment is a proceeding in a criminal case (*Cattell vs. Ireson* 27 L. J. (N. S.) M. C. 167; *Parker v. Green* 2. B. & S. 299.) The proceedings to obtain merely orders for the payment of money are civil proceedings. (*Cattell vs. Ireson supra*).

Acquittal of one of accused renders him competent to give evidence.

One of the accused pleading guilty competent witness.

Independently of the 32 & 33 Vic. c. 29 which removes a person's incapacity from crime, the law is, that where several offenders are charged and the cases are heard at one time, after all the evidence on both sides has been heard, if there be no evidence against one of them he is then entitled to demand an acquittal. (*Wright vs. Palin* R. & M. C. C. 128,) but he is not entitled to a verdict in the midst of the inquiry, (*Emmett vs. Butler* 7 Taunt 599) although the Court may

in its discretion allow of his acquittal at any stage of the trial before the reply, in order that he may be examined as a witness (Bedders case 1 Sid. 237; 2 Hawk. P. C. c. 46. s. 98). When acquitted he is competent (Fraser's case 1 Mac-Nal Ev. 55; R. v. George, Car. & Mar. 111); also where one of several defendants pleads guilty, he may be called as a witness for the other defendants before sentence, unless he has an interest, as in conspiracy in obtaining their discharge. (R. v. George, Car & M. 111; See Taylor on Ev. 4th Ed. pp. 1155, 1156.)

Power and duty of Justices to administer oath to witnesses.

It may be laid down as a general rule, that wherever Justices are authorised by Act of Parliament to hear and determine, or examine witnesses, they have incidentally a power to take the examinations on oath or solemn affirmation as the case may be, and in fact examinations not on oath or solemn affirmation, with one exception hereafter to be noticed, are not evidence.

The oath is generally in the following form,

Form of oath.

"The evidence you shall give touching this information
 "(or complaint or the present charge or the application or as
 "the case may be) wherein is informant (or com-
 "plainant or as the case may be) and is Defendant
 "(or as the case may be) shall be the truth, the whole truth,
 "and nothing but the truth. So help you God." the New
 Testament should be, during the administration of the oath,
 held in the witness' right hand and at its conclusion he should
 kiss it.

Quaker.

If the witness is a Quaker or other person allowed by law to affirm instead of swearing in civil cases, or solemnly declar-

ing that the taking of any oath is according to his religious belief unlawful, he is permitted so make his solemn affirmation or declaration of the facts he affirms to, commencing it with the words " L. A. B. do solemnly, sincerely and truly " declare and affirm that &c." (32 & 33 Vic. c. 29. s. 61.)

Form of oath to be accomodated to religious belief of witness.

The form of oaths under which God is invoked as a witness, or as an avenger of perjury, is to be accomodated to the religious persuasion which the swearer entertains of God, and to be administered in such form as is binding on the witness' conscience; it being vain to compel a man to swear by a God in whom he does not believe, and whom he does not therefore reverence.

Infidels.

But if a person says he has no belief in a God, or in a future state, he cannot be sworn, and his evidence cannot be received (Maden v. Catanagh 26. J. P. 248; Powell; 22 Taylor on Ev. p. 1251).

Jews.

A Jew is sworn upon the Pentatench with his head covered (2 Hale. P. C. 279; Omichund v. Barker, Willes 543), but a Jew who stated that he professed Christianity, but had never been baptized, nor ever formally renounced the Jewish faith, was allowed to be sworn on the New Testament (Gilhams case 1 Esp. 285). Where a witness refused to be sworn in the usual way, but desired to be sworn by having the book laid open before him, and holding up his right hand he was sworn accordingly (Dalton v. Colt 2. Sid. 6, Willes 553).

Scotch.

The Scotch oath is thus administered; holding up his right hand uncovered, the witness repeats after the Clerk (who ought

to administer the oath with solemnity and reverence, standing); "I swear by Almighty God, and as I shall answer to God at the great day of judgment, that I will tell the truth, the whole truth, and nothing but the truth, in so far as I know and shall be asked in this cause" (Vide with slight alterations forms in *Mildranes case 1 Leach 412*; & *Mee. v. Reid, Peake N. P. C. 23*).

Mahometans.

Parsees.

Peers.

A Mahometan is sworn on the Koran, placing one hand on the book, the other on his forehead, he brings the top of his forehead down to the book, touches it with his head, and then looks for some time upon it (*Roscoe Cr. Ev. 3 Ed. p. 331*). A Parsee swears in a similar mode, except that instead of the Koran he swears on the prayer book used by the Parsees. A Peer must be sworn if examined as a witness (*Archbold P. & Ev. Civ. Act 480*).

Gentoos.

Chinese.

Deaf and dumb persons and foreigners.

Oath of interpreter.

The deposition of a Gentoo has been received, who touched with his hand the foot of a Brahmin (*Omichund v. Barker 1. Atk. 21*). A Chinese on entering the box kneels down, and a china saucer being placed in his hand he breaks it against the box—the clerk then administers the oath to him in these words "you shall tell the truth and the whole truth; the saucer is cracked, and if you do not tell the truth, your soul will be cracked like the saucer (*Entrehmans case 1. Car & M. 248*). Deaf and dumb witnesses, as well as others who do not speak the language spoken by the justice, should be sworn

through the medium of another person duly qualified to interpret them, the interpreter being first sworn faithfully to interpret what the witness may say. The interpreters oath may be in the following form.

“ You shall truly and faithfully interpret the evidence about to be given, and all other matters and things touching the present charge (*or information as the case may be*) and the (*French or as the case may be*) language into the English language, and the English language into the (*French or as the case may be*) language, according to the best of your skill and ability—So help you God.

MODE OF EXAMINATION OF WITNESSES.

Examination in chief.

On an examination in chief a witness must not be asked leading questions, i. e. questions in such a form as to suggest the answers desired. There are several exceptions to this rule: 1o. With the permission of the Court, when the witness is hostile to the party by whom he is examined. 2o. Where a witness has apparently forgotten a circumstance, by inspections of a memorandum to refresh his memory (Powell 376, 379); 3o. Where the object is to contradict another witness as to a certain fact. 4o. Where the object is to identify persons. 5o. Where the question is merely introductory to another. A witness must be asked only questions of fact which are relevant and pertinent to the issue; and he cannot be asked irrelevant questions, or questions as to his own inferences from a personal opinion of fact.

General rule.

By the 32 & 33 Vic. cap. 29 it is provided that:

s. 68 “ A party producing a witness shall not be allowed to
“ impeach his credit by general evidence of bad character, but

“in case the witness in the opinion of the Court, proves adverse, such party may contradict him by other evidence, or by leave of the Court, may prove that the witness made at other times a statement inconsistent with his present testimony; but before such last mentioned proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he did make such statement.”

Exceptions.

It is further provided by the same Statute that :

s. 66 “It shall not be necessary to prove by the attesting witness any instrument to the validity of which attestation is not requisite, and such instrument may be proved by admission or otherwise, as if there had been no attesting witness thereto.

s. 67 “Comparison of a disputed writing with any writing proved to the satisfaction of the Court to be genuine, shall be permitted to be made by witnesses; and such writings and the evidence of witnesses respecting the same, may be submitted to the Court and Jury, as evidence of the genuineness or otherwise of the writing in dispute.

Cross-examination.

On cross examination, a witness may be asked leading questions; but where the witness appears to be favorable to the party cross-examining, the Court will sometimes not suffer him to lead his opponent's witness (Powell 381).

The 32 & 33 Vic. cap. 29 contains the following provisions :

s. 64 “Upon any trial, a witness may be cross-examined as to previous statements made by him in writing, or reduced into writing, relative to the subject matter of the case, without

“ such writing being shown to him ; but if it is intended to
“ contradict the witness by the writing, his attention must be-
“ fore such contradictory proof can be given, be called to those
“ parts of the writing which are to be used for the purposes of
“ so contradicting him ; and the Judge at any time during the
“ trial, may require the production of the writing for his ins-
“ pection, and he may thereupon make such use of it for the
“ purposes of the trial as he thinks fit.

s. 85 “ A witness may be questioned as to whether he has been
“ convicted of any felony or misdemeanor, and upon being so
“ questioned, if he either denies the fact or refuses to answer,
“ the opposite party may prove such conviction, and a certi-
“ ficate, as provided in section twenty-six, shall, upon proof
“ of the identity of the witness as such convict, be sufficient
“ evidence of his conviction, without proof of the signature
“ or the official character of the person appearing to have
“ signed the certificate.

s. 69 “ If a witness, upon cross-examination as to a former
“ statement made by him, relative to the subject matter of the
“ case, and inconsistent with his present testimony, does not
“ distinctly admit that he did make such statement, proof
“ may be given that he did in fact make it ; but before such
“ proof can be given, the circumstances of the supposed state-
“ ment, sufficient to designate the particular occasion, must
“ be mentioned to the witness, and he must be asked whether
“ or not he did make such statement.

Witness as to character.

Where a prisoner calls witnesses as to character only, it is not usual to cross-examine them, although the strict right so to do exists (*Vide* as to general reputation and evidence in reply to evidence of character *Reg. vs. Rowton* 1 Leig^h. & Cave C. C. 520), nor is a person to be cross-examined who is merely called to produce a deed or other instrument.

Re-examination.

The office of a re-examination is to be confined to showing the true color and bearing of the matter elicited by cross-examination; and new facts or new statements not tending to explain the witness' previous answers, are not to be admitted (Prince vs. Samo 7 Ad. & E. 627; Queen's Case 2. B. & B. 297; Powell 390).

GENERAL RULES AS TO ORAL AND OTHER EVIDENCE.

*General Rules.**Best evidence.**Originals accounted for ere secondary evidence given.**Notice to produce.**Subpœna duces tecum.**Notice to produce unnecessary in certain cases.*

From various decisions and authorities the following rules have been extracted :

1.—One witness is sufficient if he can prove the necessary facts, except where any statute declares there must be two witnesses as in High Treason, and in cases of perjury.

2.—The evidence offered must correspond with the allegations and be confined to the points in issue (Taylor sec. 172).

3.—The best evidence of which the nature of the case is capable must be given, and this rule relates not to the measure and quantity of evidence, but to the quality. (Powell 36).

4.—The law presumes innocence until the contrary be proved. (Powell 45).

5.—Hearsay evidence is inadmissible. (Powell 70.) (3)

6.—The issue must be proved by the party who states an affirmative; not by the party who states a negative. (Powell 167. Vide 32 & 33 Vic. c. 31 s. 43 post).

(3) Vide post nos, 24, 25.

7.—The issue must be proved by the party who states the affirmative in substance, and not merely the affirmative in form. (Powell 168).

8.—In every case the onus probandi lies on the person who wishes to support his case by a particular fact, which lies more peculiarly within his knowledge, or of which he is supposed to be cognizant. (Powell 170).

9.—It is enough if only the substance of the issue be proved. (Powell 172).

10.—Where two persons are charged jointly, the confession, or statements of one will not be evidence against the other. (Powell 164).

11.—On trials for conspiracy, where the conspiracy has been proved, the acts of one conspirator are evidence against the other conspirators. (Powell 164).

12.—Conversations which have taken place out of the hearing of the party to be affected cannot be given in evidence.

13.—That the evidence of an accomplice is admissible, but ought not to be fully relied upon, unless it be corroborated by some collateral proof. (Powell 24.)

14.—That where positive evidence of the facts cannot be supplied, circumstantial or presumptive evidence is admissible; and that circumstantial evidence should be such as to produce nearly the same degree of certainty as that which arises from direct testimony, and to exclude a rational probability of innocence. (1 Starkie on Ev. 3. Ed. pp. 571, 575).

15.—The law presumes in criminal matters, that every person intends the probable consequences of an act which may be highly injurious. (Powell 46).

16.—It is a general presumption of law that a person acting in a public capacity is duly authorized to do so. (Powell 48).

17.—If a man by his own wrongful act withhold the evidence by which the nature of his case would be manifested, every presumption to his disadvantage will be adopted. (Powell 49).

18.—The law presumes in favour of the continuance of life. (Powell 50).

19.—A tenant cannot dispute his landlord's title. (Powell 52).

20.—A witness must only state facts; and his mere personal opinion is not evidence. (Powell 54, see exception No. 21).

21.—The opinions of skilled or scientific witnesses are admissible evidence to elucidate matters which are of a strictly professional or scientific character. (Powell 55).

22.—Counsel, solicitors and attorneys cannot be compelled to disclose communications which have been made to them in professional confidence by their clients. (Powell 60). Nor can Priests and Ministers be compelled to disclose secrets confided to them in confession made under the regulations of their respective churches or persuasions.

23.—A witness cannot be compelled and will not be allowed to state facts, the disclosure of which may be prejudicial to any public interest. (Powell 66).

24.—In matters of public or general interest, popular reputation or opinion, or the declaration of deceased witnesses, if made before the litigated point has become the subject of controversy, and without reasonable suspicion of undue partiality or collusion, will be received as competent and credible evidence. (Powell 78).

25.—The declarations of deceased persons are not admissible as reputation, unless they have been made before the issue has become, or appeared likely to become, a subject of judicial controversy. (Powell 87).

26.—Ancient documents purporting to be part of the transaction to which they relate, and not a mere narrative of them,

are receivable in evidence that those transactions actually occurred, provided they be produced from proper custody. (Powell 89).

27.—In murder or homicide, the declarations of the deceased, concerning the cause and circumstances of the mortal wound, if made with a full consciousness of approaching death and religious responsibility, are admissible in evidence for or against a prisoner who is charged with the crime. (Powell 107).

28.—The admission of a partner is evidence against his copartner in civil proceedings (Powell 142, 156); under which rule is included admissions by persons acting in the character of agents or attorneys.

29.—Voluntary statements or observations made by a prisoner before the examining magistrate are strictly admissible against him, whether reduced into writing or not. (1 Phill. 422; Reg. v. Stripp. 1 Dears. C. C. 648; 1 Lea. 309).

DOCUMENTARY EVIDENCE.

- (1.) As to private documents,
- (2.) As to public documents,
- (3.) Foreign and colonial laws.

1. AS TO PRIVATE DOCUMENTS.

According to the rule, that the best evidence must be given (ante rule 3, p. 25), and that secondary evidence is inadmissible until the absence of primary evidence is explained satisfactorily, a party who relies upon a written document, must either produce it, or show that he has made every reasonable effort to produce it. In the latter case, if he has been unsuccessful, he may prove the original document, either by a copy, or any other authentic kind of secondary parol evidence. (Powell, 295)

The rule is, that all originals must be accounted for, before secondary evidence can be given of any one. (Parke, B. *Alison v. Furnival*, 1 C. M. & R. 392).

It must first be proved that the original is in the hands of the adverse party, and that a notice to produce has been served on such a party a reasonable time before the hearing; but where the document is in the hands of a third party, a subpoena *duces tecum* must be obtained from the crown office, justices having no power in any case to summon a witness and require him to produce documents before them. A notice to produce is, however, unnecessary in these cases. (Powell 299, 301).

1.—Where a party holds a duplicate original or counter part of the adversary's document;

2.—Where the nature of the case and proceedings inform the adverse party sufficiently, that he will be required to produce the document;

3.—A notice to produce a notice is not required, e. g. a, notice to quit, a notice of action, notice of dishonour of a bill, notice to produce a signed attorney's bill in an action on it;

4.—If a party or his attorney be shown to have an original with him in court, and refuses to produce it, secondary evidence will be received, notwithstanding the want of a notice to produce;

5.—Notice will not be required when the adverse party has admitted the loss of the original or where it is in the nature of an irremovable fixture;

6.—Merchant seamen are permitted to prove orally an agreement with the master of a ship, without producing the original or giving notice to produce it. (17 & 18 Vic. c. 104. s. 165).

Proof of handwriting how made.

Common law exception, to rule of calling attesting witness.

Documents to refresh memory of witness.

The proof of signatures or handwriting is the essential part of the proof of private writings; there are various admissible kinds of such proof:

1.—Handwriting may be proved by a witness who actually saw the party write or sign, which is the most satisfactory evidence;

2.—By a witness who has seen the party write on other occasions, even if it be but once only;

3.—By a witness who has seen documents purporting to be written by the same party, and which, by subsequent communications with such party, he has reason to believe the authentic writings of such party;

4.—By 32 & 33 Vic. c. 29 s. 67 (applicable to all Courts and proceedings of a criminal nature) "comparison of a disputed handwriting with any writing proved to the satisfaction of the Judge to be genuine shall be permitted to be made by witnesses; and such writings and the evidence of witnesses respecting the same, may be submitted to the Court and Jury as evidence of the genuineness or otherwise of the writing in dispute."

Should there be an attesting witness to the writing he must in certain cases be called; but by 32 & 33 Vic. c. 29, s. 66, in all cases, it is not now "necessary to prove by the attesting witness any instrument, to the validity of which attestation is not requisite, and such instrument may be proved as if there had been no attesting witness thereto." To this reservation there are several common law exceptions. Thus it is a rule that—an attesting witness need not be called to prove an instrument which is more than thirty years old; or when

the original is held by an adverse party, who refuses to produce it after notice (Okes Syn. p. 84), or when the adverse party, in producing it, after notice, claims an interest under it; or when the adverse party has recognized the authenticity of the instrument by acts in the nature of an estoppel in a judicial proceeding (Okes Syn. p. 84), or when the attesting witness is proved to be dead, insane, beyond the jurisdiction of the Court, or otherwise not producible after due endeavours to bring him before the Court.

It will be sufficient generally to prove in these cases the handwriting of the attesting witness (Powell, 307). Documents will often be admissible to refresh the memory of a witness, and the witness may give oral evidence accordingly after a perusal of their contents:—

1.—When the writing actually revives in his mind a recollection of the facts to which it refers;

2. When although it fail to revive such a recollection, it creates a knowledge or belief in the witness that, at the time when the writing was made, he knew or believed it to contain an accurate statement of such facts;

3.—When although the writing revives neither a recollection of the facts, nor of a former conviction of its accuracy, the witness is satisfied that the writing would not have been made, unless the facts, which it purports to describe, had occurred accordingly (Powell, 309).

The following are established rules as to the admission of oral evidence to vary or explain written documents:—

1.—Extrinsic evidence is inadmissible to contradict, add to, subtract from, or vary the terms of a written instrument.

2.—Extrinsic oral evidence is inadmissible to prove that another contract not under seal has been discharged, either before, or after breach.

3.—A written instrument cannot be released or avoided by evidence of an intrinsically inferior nature.

4.—Extrinsic evidence is admissible to explain written evidence. (Powell, 331, 356).

2. PUBLIC DOCUMENTS.

Justices of the Peace take judicial notice of numerous facts without proof, as the public Statutes of the Imperial Parliament; the Statutes of the Dominion of Canada; their own course of procedure and practice; the maritime law of nations; the great and privy seals of the realm; royal proclamations; the divisions of the year; Territorial Divisions of the Dominion of Canada; the Canada Gazette; but they will not notice the laws or customs of foreign States, and such laws must be proved by skilled witnesses. So also must local laws of the Provinces other than the one for a Division of which the Justice has been appointed. (Vide Powell 242. Taylor. sec. 7; Okes Syn. p. 85.)

Other documents are proved as follows; Judgments of Courts of Record by certified copy under Seal of Court;

Assignments in insolvency before a Notary passed in the Province of Quebec by copy certified by the Notary before whom original deed was executed. (32 & 33 Vic. c. 16 s. 115).

By the Cons. Stat. of Canada cap. 80 the following provisions were made with respect to the admission of evidence of foreign judgments and certain official and other documents.

1. Any judgment, decree or other judicial proceeding, recovered, made, had or taken in any of the Superior Courts of Law, Equity or Bankruptcy, in England, Ireland or Scotland, or in any Court of Record in Lower Canada, or in any State of the United States of America, may be proved in any suit, action or proceeding, either at Law or Equity in

“Upper Canada, in which proof of any such judgment, decree or judicial proceeding may be necessary or required, by an exemplification of the same under the Seal of the said Courts respectively, without any proof of the authenticity of such Seal, or other proof whatever, in the same manner as any judgment, decree or similar judicial proceeding of any of the Superior Courts of Common Law or Equity in Upper Canada may be proved by an exemplification thereof in any judicial or other proceedings in the said last mentioned Courts respectively.”

s. 2 “A notarial copy of any notarial act or instrument in writing made in Lower Canada, before a notary or notaries, filed, enrolled or enregistered by such notary or notaries, shall be received in evidence in any judicial or other proceeding, either at Law or Equity in Upper Canada, in the place and stead of the original, and shall have the same force and effect as the original would have if produced and proved.”

s. 3 “Such notarial copy may be rebutted or set aside by proof that there is no such original, or that the notarial copy is not a true copy of the original in some material particular, or that the original is not an instrument of such nature as may by the law of Lower Canada be taken before a notary or notaries, or be filed, enrolled or enregistered by a notary or notaries in Lower Canada.”

s. 4 “Any judgment, decree, or other judicial proceeding of any Court of Record in Upper Canada, may be proved in any suit, action or proceeding, in any Court in Lower Canada, by the production of an exemplification of such judgment, decree, or other judicial proceeding, under the Seal of such Court of Record, without any proof of the authenticity of the Seal, or other proof whatever.”

s. 5 " In every case in which the original record could be
" received in evidence, a copy of any official or public docu-
" ment in this Province, purporting to be certified under the
" hand of the proper officer or person in whose custody such
" official or public documents may be placed, or a copy of
" any document, by-law, rule, regulation or proceeding, or a
" copy of any entry in any Register or other book of any
" Corporation, created by charter or statute in this province,
" purporting to be certified under the Seal of such Corpo-
" ration, and the hand of the presiding officer or secretary
" thereof, shall be receiveable in evidence of any particular
" in any Court of Justice, or before any legal tribunal, or
" the Legislative Council or Assembly, or any committee
" thereof respectively, or in any judicial proceeding, without
" any proof of the Seal of such Corporation, or of the signa-
" ture, or of the official character of the person or persons
" appearing to have signed the same, and without any further
" proof thereof."

s. 6 " All Courts, Judges, Justices, Masters in Chancery,
" Clerks of Courts, Prothonotaries, Commissioners, judicially
" acting, and other judicial officers in this Province, shall
" take judicial notice of the signature of any of the Judges
" of the Superior, Circuit, or County Courts of Law or
" Equity in Upper or in Lower Canada, provided such
" signature be appended or attached to any decree, order,
" certificate, affidavit or other judicial or official document."

In Quebec, besides the act just in part recited, it is pro-
vided by the Con. Stat. of Lower Canada, cap. 90, s. 5,
that the exemplification of any judgment, decree, or other
judicial proceeding of any Court in the world, under its
seal or under the signature of the Prothonotary, Clerk or
Custodier of the Record, constitutes *primâ facie* evidence

of such judgment, decree, &c., unless proof to the contrary be made. S. 6 provides as to the reception of the exemplifications of wills, executed in any country under the seal of the Court where the will is of record, or under the signature of the Judge, Surrogate or Clerk of such Court, or of the Custodier of such will, as *primâ facie* evidence of the execution of such will; and also provides that the Probate of such will under the seal of a Court of competent jurisdiction shall be received as *primâ facie* evidence of its contents, and also of the death of the testator, unless proof to the contrary be made. S. 9 provides that a copy of Probate of a will granted by a Foreign Court may be recorded in the office of the Prothonotary of the Superior Court, who then can grant copies thereof having the same force and effect as the original exemplification. S. 7 provides that certificates of marriage, birth and burial, granted by the priest, minister, clergyman who officiated thereat, or of the public officer before whom such marriage was contracted, or an extract from any register kept for the registration of any such marriage, baptism or burial, certified by the legal Custodier thereof, shall be taken and received as *primâ facie* evidence of its contents.

The seals, signatures, and authority of the officer certifying, need not be proved unless expressly denied in writing by any party to the suit or proceeding in which such documents so signed, sealed or certified be produced. (s. 8 and 11.)

The seal of any Foreign State and the certificate of any of its Secretaries of State, when offered in evidence to establish the existence and competency of any Court, corporate body, clergyman, priest or minister, office or officer, its or his identity in relation to any public document, or any other

matter shall be deemed authentic without proof thereof, and shall be taken and received as *prima facie* evidence of the fact intended to be established thereby (s. 10), subject to denial as mentioned in the preceding paragraph.

The 80 cap. Con. Stat. of Canada applies to the Provinces of Quebec and Ontario. The 90 cap. Con. Stat. of Lower Canada applies solely to the Province of Quebec.

In any of the other Provinces in which no acts to the like effect were passed previous to the creation of the Dominion, the rules of the Common Law must be followed as to the proof of foreign judgments, decrees, &c.

JURISDICTION OF THE QUARTER SESSIONS.

By their commission (when properly drawn), Justices in session are directed to hear and determine all felonies, poisonings, enchantments, sorceries, arts, magic, trespasses, &c., and all other crimes and offences, of which such Justices may or ought lawfully to inquire. (*Ante* p. 3 n. 1.)

Under the term felonies they had originally power to try all capital felonies, *e. g.* murder, although not specially named (Hawk. b. 2, c. 8, § 33); but they have been held to have no jurisdiction in forgery (*Id.* § 38, and *Reg. vs. Yarrington*, Salkeld 406).

They had no jurisdiction to hear and determine treason, misprision of treason or *præmunire* (2 Hawk. c. 8, § 59).

Under the term trespasses they had authority to try all misdemeanors which either involved a breach of the peace, or had a tendency to produce it; among which latter class conspiracies have been included (*R. vs. Rispal*, 3 Burr. R. 1320). It has indeed been held that they have no power to try perjury when prosecuted at Common Law (2 Hawk., c. 8, § 38, *R. vs. Haynes*, R. & M. N. P. C. 298; *Reg. vs.*

Yarrington 1, Salkeld 406; *R. vs. Gibbs* 1, East 173); though if that offence was indicted under 5 E., c. 9, (which rarely happens) they have jurisdiction over it by the express words of the act.

It seems to be now clear, that where an offence is created and declared a misdemeanor by a statute passed since the institution of the office of a Justice of the Peace, it may be tried by a Court of Quarter Sessions, unless there is some special direction that it shall be heard and determined by another Court. (Dickenson's Prac. Guide to the Quarter Session, 4th Ed. p. 129, and *vide* cases contra in note (h) same page).

Where a statute creates a new offence, and limits it to be tried before a Superior Court having criminal jurisdiction, the Quarter Sessions cannot try it. (*Vide* 32 & 33 Vic., c. 29, § 12).

By the 32 & 33 Vic., c. 29, § 12, it is provided that—

“No Court of General or Quarter Sessions, or Recorder's Court, nor any Court but a Superior Court having criminal jurisdiction, shall have power to try any treason, or any felony punishable with death, or any libel.”

By the 32 & 33 Vic., c. 21, § 76–92, it is provided as follows:—

Agent, banker, &c., embezzling money or selling securities, &c., intrusted to him; or goods, &c., intrusted to him for safe custody.

Punishment.

Not to bankers, &c., receiving money due on securities; or disposing of securities on which they have a lien.

s. 76 “Whosoever, having been intrusted, either solely or jointly with any other person, as a banker, merchant, broker, attorney or other agent, with any money or security for

“ the payment of money, with any direction in writing to
“ apply, pay or deliver such money or security or any part
“ thereof respectively, or the proceeds, or any part of the
“ proceeds of such security for any purpose, or to any person
“ specified in such direction, in violation of good faith, and
“ contrary to the terms of such direction, in anywise con-
“ verts to his own use or benefit, or the use or benefit of any
“ person other than the person by whom he has been so
“ intrusted, such money, security, or proceeds, or any part
“ thereof respectively, and whosoever, having been intrusted,
“ either solely or jointly with any other person, as a banker,
“ merchant, broker, attorney, or other agent, with any chattel
“ or valuable security, or any power of attorney for the sale
“ or transfer of any share or interest in any public stock or
“ fund, whether of the United Kingdom, or any part thereof,
“ or of this Dominion of Canada, or any Province thereof, or
“ of any British Colony or Possession, or of any foreign state,
“ or in any stock or fund of any body corporate, company or
“ society, for safe custody or for any special purpose without
“ any authority to sell, negotiate, transfer or pledge, in viola-
“ tion of good faith, and contrary to the object or purpose
“ for which such chattel, security, or power of attorney has
“ been intrusted to him, sells, negotiates, transfers, pledges,
“ or in any manner converts to his own use or benefit, or the
“ use or benefit of any person other than the person by whom
“ he has been so intrusted, such chattel, or security, or the
“ proceeds of the same, or any part thereof, or the share or
“ interest in the stock or fund to which such power of attor-
“ ney relates, or any part thereof, is guilty of a misdemeanor,
“ and shall be liable to be imprisoned in the Penitentiary for
“ any term not exceeding seven years and not less than two
“ years, or to be imprisoned in any other gaol or place of

“confinement for any term less than two years, with or
“without hard labour, and with or without solitary confine-
“ment; but nothing in this section contained relating to
“agents shall affect any trustee in or under any instrument
“whatsoever, or any mortgagee of any property, real or
“personal, in respect to any Act done by such trustee or
“mortgagee in relation to the property comprised in or
“affected by any such trust or mortgage; nor shall restrain
“any banker, merchant, broker, attorney or other agent from
“receiving any money due or to become actually due and
“payable upon or by virtue of any valuable security,
“according to the tenor and effect thereof, in such manner
“as he might have done if this Act had not been passed;
“nor from selling, transferring, or otherwise disposing of
“any securities or effects in his possession, upon which he
“has any lien, claim, or demand, entitling him by law so to
“do, unless such sale, transfer or other disposal extends to a
“greater number or part of such securities or effects than
“are requisite for satisfying such lien, claim or demand.”

Bankers, &c., fraudulently selling, &c., property intrusted to their care.

s. 77 “Whosoever, being a banker, merchant, broker,
“attorney, or agent, and being intrusted, either solely, or
“jointly with any other person, with the property of any
“other person for safe custody, with intent to defraud, sells,
“negociates, transfers, pledges, or in any other manner con-
“verts or appropriates the same or part thereof, to or for his
“own use or benefit, or the use or benefit of any person
“other than the person by whom he was so intrusted, is
“guilty of a misdemeanor, and shall be liable to any of the
“punishments which the Court may award as hereinbefore
“last mentioned.”

Persons under powers of attorney fraudulently selling property.

s. 78 "Whosoever, being intrusted, either solely or jointly
"with any other person, with any power of Attorney, for
"the sale or transfer of any property, fraudulently sells or
"transfers, or otherwise converts the same or any part
"thereof to his own use or benefit, or the use or benefit of
"any person other than the person by whom he was so
"intrusted, is guilty of a misdemeanor, and shall be liable to
"any of the punishments which the Court may award as
"hereinbefore last mentioned."

Factors obtaining advances on the property of their principals.

Clerks wilfully assisting.

Proviso, as to cases excepted when the pledge does not exceed the amount of their lien.

s. 79 "Whosoever, being a factor or agent intrusted, either
"solely or jointly with any other person, for the purpose of
"sale or otherwise, with the possession of any goods, or of
"any document of title to goods, contrary to or without the
"authority of his principal in that behalf, for his own use or
"benefit, or the use or benefit of any person, other than
"the person by whom he was so intrusted, and in violation
"of good faith, makes any consignment, deposit, transfer or
"delivery of any goods or document of title so intrusted
"to him as in this section before mentioned, as and by way
"of a pledge, lien or security of any money or valuable
"security, borrowed or received by such factor or agent at or
"before the time of making such consignment, deposit, transfer
"or delivery, or intended to be thereafter borrowed or
"received, or contrary to, or without such authority, for his
"own use or benefit, or the use or benefit of any person

“other than the person by whom he was so intrusted, and
“in violation of good faith, accepts any advance of any
“money or valuable security on the faith of any contract or
“agreement to consign, deposit, transfer or delivery of any
“such goods, or document of title, is guilty of a misde-
“meanor, and shall be liable to any of the punishments
“which the Court may award as hereinbefore last men-
“tioned; and every clerk or other person who knowingly
“and wilfully acts and assists in making any such consign-
“ment, deposit, transfer or delivery, or in accepting or
“procuring such advance as aforesaid, is guilty of a misde-
“meanor, and shall be liable to any of the same punish-
“ments; Provided that no such factor or agent shall be
“liable to any prosecution for consigning, depositing, trans-
“ferring or delivering any such goods, or documents of title,
“in case the same are not made a security for, or subject
“to the payment of any greater sum of money than the
“amount, which at the time of such consignment, deposit,
“transfer, or delivery, was justly due and owing to such
“agent from his principal, together with the amount of any
“bill of exchange drawn by or on account of such principal,
“and accepted by such factor or agent.”

*Definitions of terms: intrusted, pledge, possessed, loan
or advance, contract or agreement, advance.*

Possession to be evidence of intrusting.

s. 80 “Any factor or agent intrusted as aforesaid, and
“possessed of any such document of title, whether derived
“immediately from the owner of such goods, or obtained by
“reason of such factor or agent having been intrusted with
“the possession of the goods, or of any other document of
“title thereto, shall be deemed to have been intrusted with
“the possession of the goods represented by such document

“ of title ; and every contract pledging or giving a lien upon
“ such document of title as aforesaid, shall be deemed to be
“ a pledge of and lien upon the goods to which the same
“ relates ; and such factor or agent shall be deemed to be
“ possessed of such goods or document, whether the same
“ are in his actual custody or held by any other person sub-
“ ject to his control, or for him, or on his behalf ; and where
“ any loan or advance is *bonâ fide* made to any factor or
“ agent intrusted with and in possession of any such goods
“ or document of title ; on the faith of any contract or agree-
“ ment in writing to consign, deposit, transfer or deliver such
“ goods or document of title, and such goods or document
“ of title is or are actually received by the person making
“ such loan or advance, without notice that such factor or
“ agent was not authorized to make such pledge or security,
“ every such loan or advance shall be deemed to be a loan or
“ advance on the security of such goods or document of
“ title, within the meaning of the last preceding section,
“ though such goods or document of title are not actually
“ received by the person making such loan or advance till a
“ period subsequent thereto ; and any contract or agreement
“ whether made direct with such factor or agent, or with
“ any clerk or other person on his behalf, shall be deemed
“ a contract or agreement with such factor or agent ; and
“ any payment made, whether by money or bill of exchange
“ or other negotiable security, shall be deemed to be an
“ advance within the meaning of the last preceding section ;
“ and a factor or agent in possession, as aforesaid, of such
“ goods or document, shall be taken for the purpose of the
“ last preceding section, to have been intrusted therewith by
“ the owner thereof, unless the contrary be shown in evi-
“ dence.”

Trustees fraudulently disposing of property guilty of a misdemeanor.

No prosecution shall be commenced without the sanction of some judge or the Attorney General.

s. 81 "Whosoever, being a trustee of any property for
"the use or benefit, either wholly or partially, of some other
"person, or for any public or charitable purpose, with intent
"to defraud, converts or appropriates the same, or any part
"thereof, to or for his own use or benefit, or the use or
"benefit of any person other than such person as aforesaid,
"or for any purpose other than such public or charitable
"purpose as aforesaid or otherwise disposes of or destroys
"such property or any part thereof, is guilty of a misde-
"meanor, and shall be liable to any of the punishments
"which the Court may award as hereinbefore last men-
"tioned; Provided that no proceeding or prosecution for
"any offence included in this section shall be commenced
"without the sanction of the Attorney General, or Solicitor
"General for that Province in which the same is to be insti-
"tuted; Provided also, that when any civil proceeding has
"been taken against any person to whom the provisions of
"this section may apply, no person who has taken such civil
"proceeding shall commence any prosecution under this sec-
"tion without the sanction of the Court or Judge before
"whom such civil proceeding has been had or is pending."

Directors, &c., of any body corporate or public company fraudulently appropriating property.

s. 82 "Whosoever, being a director, member, manager or
"public officer of any body corporate or public company,
"fraudulently takes or applies for his own use or benefit, or
"for any use or purposes other than the use or purposes of
"such body corporate or public company, any of the pro-

“perty of such body corporate or public company, is guilty
“of a misdemeanor, and shall be liable to any of the punish-
“ments which the Court may award as hereinbefore last
“mentioned.”

Or fraudulently keeping false accounts, or books.

s. 83 “Whosoever, being a director, member, manager, or
“public officer of any body corporate or public company,
“as such receives or possesses himself of any of the property
“of such body corporate or public company, otherwise than
“in payment of a just debt or demand, and, with intent to
“defraud, omits to make, or to cause or direct to be made,
“a full and true entry thereof in the books and accounts
“of such body corporate or public company, is guilty of a
“misdemeanor, and shall be liable to any of the punish-
“ments which the Court may award as hereinbefore last
“mentioned.”

Or wilfully destroying or falsifying books or papers, &c.

s. 84 “Whosoever, being a director, manager, public
“officer, or member of any body corporate or public com-
“pany, with intent to defraud, destroys, alters, mutilates or
“falsifies any book, paper, writing or valuable security
“belonging to the body corporate or public company, or
“makes or concurs in the making of any false entry, or
“omits, or concurs in omitting any material particular in
“any book of account or document, is guilty of a misde-
“meanor, and shall be liable to any of the punishments which
“the Court may award as hereinbefore last mentioned.”

Or fraudulently publishing false statements or accounts.

s. 85 “Whosoever, being a director, manager, or public
“officer, or member of any body corporate or public com-
“pany, makes, circulates or publishes, or concurs in making,
“circulating or publishing any written statement or account

"which he knows to be false in any material particular, with
 "intent to deceive or defraud any member, shareholder, or
 "creditor of such corporate or public company, or with
 "intent to induce any person to become a shareholder or
 "partner therein, or to intrust or advance any property to
 "such body corporate or public company, or to enter into
 "any security for the benefit thereof, is guilty of a misde-
 "meanor, and shall be liable to any of the punishments
 "which the Court may award as hereinbefore last men-
 "tioned."

No person to be exempt from answering questions in any court; but no person making a disclosure in any compulsory proceeding to be liable to prosecution.

s. 86 "Nothing in any of the last ten preceding sections
 "of this Act contained shall enable or entitle any person to
 "refuse to make a full and complete discovery by answer to
 "any bill in equity, or to answer any question or interroga-
 "tory in any civil proceeding in any Court, or upon the
 "hearing of any matter in bankruptcy or insolvency; and
 "no person shall be liable to be convicted of any of the mis-
 "demeanors in the said sections mentioned by any evidence
 "whatever, in respect of any act done by him, if, at any
 "time previously to his being charged with such offence, he
 "has first disclosed such act on oath, in consequence of any
 "compulsory process of any Court of Law or Equity, in any
 "action, suit or proceeding, *bonâ fide* instituted by any
 "party aggrieved, or if he has first disclosed the same in any
 "compulsory examination or deposition before any Court,
 "upon the hearing of any matter in bankruptcy or insol-
 "vency."

No remedy at law or in equity to be affected.

Convictions not to be received in evidence in civil suits.

s. 87 " Nothing in the last eleven preceding sections of
" this Act contained, nor any proceeding, conviction or judg-
" ment to be had or taken thereon against any person under
" any of the said sections shall prevent, lessen, or impeach
" any remedy at law or in equity, which any party aggrieved
" by any offence against any of the said sections might have
" had if this Act had not been passed ; but no conviction of
" any such offender shall be received in evidence in any
" action at law or suit in equity against him; and nothing in
" the said sections contained shall affect or prejudice any
" agreement entered into, or security given by any trustee,
" having for its object the restoration or repayment of any
" trust property misappropriated."

Keepers of warehouses, &c., giving false receipts.

Persons knowingly using false receipts.

s. 88 " If the keeper of any warehouse, or any forwarder,
" common carrier, agent, clerk, or other person employed in
" or about any warehouse, or if any other factor or agent,
" or any clerk or other person employed in or about the
" business of such factor or agent, knowingly and wilfully
" gives to any person a writing purporting to be a receipt
" for, or an acknowledgment of any goods or other property
" as having been received in his warehouse, or in the ware-
" house in or about which he is employed, or in any other
" manner received by him or by the person in or about
" whose business he is employed, before the goods or other
" property named in such receipt or acknowledgment have
" been actually delivered to him as aforesaid, with intent to
" mislead, deceive, injure or defraud any person or persons
" whomsoever, although such person or persons may be then

“ unknown,—or if any person knowingly and wilfully accepts
 “ or transmits or uses any such false receipt or acknowledg-
 “ ment, the person giving and the person accepting, tran-
 “ mitting or using such receipt or acknowledgment, are
 “ severally guilty of a misdemeanor, and shall be liable to
 “ be imprisoned in the Penitentiary for any term not excee-
 “ ding three years, and not less than two years, or to be
 “ imprisoned in any other gaol or place of confinement for
 “ any term less than two years, but not less than one year.”

Owners selling after advance by consignees.

Proviso : if consignee's advances be paid.

s. 89 “ If any merchandise has, in the name of the owner
 “ or of any other person, been shipped or delivered to the
 “ keeper of any warehouse or to any other factor, agent or
 “ carrier, to be shipped or carried, and the consignee after-
 “ wards advances any moneys or gives any negotiable security
 “ to such owner or other person, then, if after any such
 “ advance the said owner or other person for his own benefit
 “ and in violation of good faith, and without the consent of
 “ such consignee first had and obtained, makes any disposi-
 “ tion of such merchandise different from and inconsistent
 “ with the agreement made in that behalf between such
 “ owner or other person aforesaid and such consignee at the
 “ time of or before such money being so advanced or such
 “ negotiable security being so given, with the intent to
 “ deceive, defraud or injure such consignee, the owner or
 “ other person aforesaid, and each and every other person
 “ knowingly and wilfully acting and assisting in making
 “ such disposition for the purpose of deceiving, defrauding
 “ or injuring such consignee, is or are guilty of a misde-
 “ meanor, and shall be liable to be imprisoned in the Peni-
 “ tentiary for any term not exceeding three years, and not

“less than two years, or to be imprisoned in any other gaol
“or place of confinement for any term less than two years
“but not less than one year; but no person shall be subject
“to prosecution under this section, who had, before making
“a disposition of the merchandise aforesaid, paid or tendered
“to the consignee the full amount of any advance made
“thereon.”

*Millers, factors, &c., giving receipts for goods, and not
delivering the same accordingly.*

Proviso.

s. 90 “Any miller, warehouseman, factor, agent, or other
“person, who, after having given, or after any clerk or per-
“son in his employ has to his knowledge given, as having
“been received by him, in any mill, warehouse, vessel, cove,
“or other place, any receipt, certificate or acknowledgment,
“for grain, timber, or other goods or property, which can be
“used for any of the purposes mentioned in the Act passed
“in the thirty-first year of Her Majesty’s reign, and inti-
“tuled: ‘An Act respecting Banks,’ or any person, who,
“after having obtained any such receipt, certificate, or
“acknowledgment, and after having endorsed or assigned it
“to any bank, or person, afterwards and without the consent
“of the holder, or endorsee in writing, or the production
“and delivery of the receipt, certificate, or acknowledgment,
“wilfully alienates, or parts with, or does not deliver to
“such holder, or endorsee, of such receipt, certificate or
“acknowledgment, the grain, timber, goods, or property
“therein mentioned, is guilty of a misdemeanor, and shall
“be liable to be imprisoned in the Penitentiary for any
“term not exceeding three years, or in any other gaol or
“place of confinement for any term less than two years,¹
“not less [than one year; Provided that nothing in

"section shall prevent the offender from being indicted and
 "punished for larceny, instead of misdemeanor, if, as being
 "a bailee, his offence amounts to larceny."

As to partners.

s. 91 "If any offence in the last three preceding sections
 "mentioned be committed by the doing of any thing in the
 "name of any firm, company or copartnership of persons, the
 "person by whom such thing is actually done, or who con-
 "nives at the doing thereof, shall be deemed guilty of the
 "offence, and not any other person."

Certain misdemeanors not triable at Sessions.

s. 92 "No misdemeanor against any of the sixteen last
 "preceding sections of this Act shall be prosecuted or tried
 "at any Court of General or Quarter Sessions of the Peace;
 "and if upon the trial of any person under any of the said
 "sections, it appears that the offence proved amounts to
 "larceny, he shall not by reason thereof be entitled to be
 "acquitted of a misdemeanor under the said sections."

Thus, none of the offences specified in the foregoing sec-
 tions can be prosecuted or tried at any Court of General or
 Quarter Sessions of the Peace, nor can they be summarily
 tried with the consent of the prisoner or accused under the
 provisions of the 32 & 33 Vic., c. 35, which however only
 applies to the Provinces of Quebec and Ontario.

By the 32 & 33 Vic., c. 20, it is provided:—

Causing bodily injury by gunpowder, &c.

s. 27 "Whosoever unlawfully and maliciously, by the
 "explosion of gunpowder or other explosive substance, burns,
 "maims, disfigures, disables or does any grievous bodily
 "injury to any person, is guilty of felony, and shall be liable
 "to be imprisoned in the Penitentiary for life, or for any
 "term not less than two years, or to be imprisoned in any

“other gaol or place of confinement for any term less than
“two years, with or without hard labour and with or without
“solitary confinement.”

*Causing gunpowder to explode, or sending to any person
an explosive substance, or throwing corrosive fluid on a
person with intent to do grievous bodily harm.*

s. 28 “Whosoever unlawfully and maliciously causes any
“gunpowder or other explosive substance to explode, or sends
“or delivers to, or causes to be taken or received by any
“person, any explosive substance, or any other dangerous or
“noxious thing, or puts or lays at any place, or casts or
“throws at or upon, or otherwise applies to any person, any
“corrosive fluid, or any destructive or explosive substance,
“with intent in any of the cases aforesaid, to burn, maim,
“disfigure or disable any person, or to do some grievous
“bodily harm to any person, whether any bodily harm be
“effected or not, is guilty of felony, and shall be liable to be
“imprisoned in the Penitentiary for life, or for any term
“not less than two years, or to be imprisoned in any other
“gaol or place of confinement, for any term less than two
“years, with or without hard labour, and with or without
“solitary confinement.”

*Placing gunpowder near a building, with intent to do
bodily harm to any person.*

s. 29 “Whosoever unlawfully and maliciously places or
“throws in, into, upon, against or near any building, ship
“or vessel, any gunpowder or other explosive substance,
“with intent to do any bodily injury, to any person, whether
“or not any explosion takes place, and whether or not any
“bodily injury is effected, is guilty of felony, and shall be
“liable to be imprisoned in the Penitentiary for any term
“not exceeding fourteen years and not less than two years,

"or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and with or without solitary confinement."

Court of Q. S. not to try certain offences.

s. 48 "Neither the Justices of the Peace acting in and for any District, County, Division, City or place, nor any Judge of the Sessions of the Peace, nor the Recorder of any City, shall, at any Session of the Peace, or at any adjournment thereof, try any person for any offence under the twenty-eighth, or twenty-ninth Sections of this Act."

Vide Observations on sections of 32 & 33 Vic., c. 21, ante p. 49.

Justices in admitting parties to bail or in committing them for trial, should bear in mind the foregoing exceptions to the jurisdiction of the Quarter Sessions, and in all the cases mentioned as excepted commit, or bind over, the accused for trial before a Superior Court having jurisdiction.*

* It is impossible to account for the selection by the Legislature of a great number of the crimes and offences declared not to be triable at Quarter Sessions, or to assign any valid reason for excepting from the jurisdiction of that Court the fraud of a warehouseman, whilst the heinous crime of removing a rail belonging to a railway off a railway track, or obstructing a railway by placing across it any wood, stone, or other thing, with intent to throw a train off the track, can be there tried.

CAP. XXX.

An Act respecting the duties of Justices of the Peace, out of Sessions, in relation to persons charged with Indictable Offences."

"[Assented to 22nd June, 1869.]"

WHEREAS it is expedient to assimilate, amend and consolidate the Statute Laws of the several Provinces of Quebec, Ontario, Nova Scotia and New Brunswick, respecting the duties of Justices of the Peace out of sessions in relation to persons charged within dictable offences, and to extend the same as so consolidated to all Canada: Therefore, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows: "

The effect of this Statute and of 32 & 33 Vict., c. 36, is to repeal the Statute Laws of the several Provinces of Quebec, Ontario, Nova Scotia and New Brunswick, respecting the duties of Justices of the Peace out of sessions, in relation to persons charged with indictable offences, and to substitute in the room and place of those Statute Laws, the provisions of this Act.

1. "In all cases where a charge or complaint (A) is made before any one or more of Her Majesty's Justices of the Peace for any Territorial Division in Canada, that any person has

committed, or is suspected to have committed, any treason or felony, or any indictable misdemeanor or offence within the limits of the jurisdiction of such Justice or Justices of the Peace, or that any person guilty or suspected to be guilty of having committed any such crime or offence elsewhere out of the jurisdiction of such Justice or Justices, is residing or being, or is suspected to reside or be within the limits of the jurisdiction of such Justice or Justices, then, and in every such case, if the person charged or complained against is not in custody, such Justice or Justices of the Peace may issue his or their Warrant (B) to apprehend such person, and to cause him to be brought before such Justice or Justices, or any other Justice or Justices for the same Territorial Division."

This section is almost a copy word for word of the first part of § 1 of the Imperial Statute 11 & 12 Vic., c. 42.

Any Justice of the Peace for any Territorial Division in Canada has, under this section, power on a charge or complaint in writing (according to the Form A in the Appendix), on the oath or affirmation of any credible person being made before him, that any person has committed or is suspected to have committed any treason, felony, or indictable misdemeanor or offence within the Territorial Division for which such Justice of the Peace has been appointed to issue his warrant (in the Form B in the Appendix), to apprehend and to cause to be brought before him or any other Justice or Justices for the same Territorial Division, such persons, and in all cases where such charge or complaint is made

before a Justice of the Peace, that any person guilty or suspected to be guilty of having committed any such crime or offence elsewhere out of the Territorial Division for which such Justice of the Peace has been appointed, but within the Dominion of Canada, is residing or being, or is suspected to reside or be, within such Territorial Division, such Justice may issue his warrant (in the Form (B) in the Appendix).

In the former case the Justice of the Peace can issue his warrant, though the party charged may have left the limits of his Territorial Division, in the latter case he can issue his warrant, although the offence charged may have been committed in a Territorial Division of Canada, other than that for which he has been appointed.

In both cases the warrant issues solely in the event of the party charged or complained against not being already in custody.

In what cases the party may be summoned instead of issuing a warrant in the first instance.

Warrant if summons is disobeyed.

Proviso.

2. In all cases the Justice or Justices, to whom the charge or complaint is preferred, instead of issuing in the first instance his or their Warrant to apprehend the person charged or complained against, may, if he or they think fit, issue his or their Summons (C) directed to such person, requiring him to appear before the Justice or Justices, at the time and place to be therein mentioned, or before such other Justice or Justices of the same Territorial Division as may then be there, and if, after being served with the Summons in manner

hereinafter mentioned, he fails to appear at such time and place, in obedience to such Summons, the Justice or Justices, or any other Justice or Justices of the Peace, for the same Territorial Division, may issue his or their Warrant (D) to apprehend the person so charged or complained against, and cause such person to be brought before him or them, or before some other Justice or Justices of the Peace for the same Territorial Division, to answer to the charge or complaint, and to be further dealt with according to law; But any Justice or Justices of the Peace may, if he or they see fit, issue the Warrant hereinbefore first mentioned, at any time before or after the time mentioned in the Summons for the appearance of the accused party.

In all cases the Justice or Justices to whom is preferred the charge or complaint has the option of issuing a summons to appear or a warrant to apprehend, but in no serious case should the summons be issued; as thereby an opportunity of evading justice is afforded to the party charged.

A summons can only issue upon an information or complaint in writing sworn to or affirmed either by the informant or complainant, or by some witness or witnesses in that behalf, except only in cases where by some act or law it is specially provided that the information may be by parole merely, and without any oath or affirmation to support or substantiate the same;* but even in those excepted cases

* In England it is not necessary, where it is intended to issue a summons in the first instance, that the information or complaint should be in writing, or be sworn to or affirmed. *Vide* 11 & 12 Vic., c. 42, s. 8.

the Justice or Justices may require that the information shall be in writing if they deem it expedient. (*Vide s. 19.*)

The summons so issued must be directed to the party charged or complained against, should state in a summary way the matter of such charge or complaint, and should require the party to whom it is directed to be and appear at a certain time and place therein mentioned, before the Justice who issues the summons, or before such other Justice or Justices of the Peace for the same Territorial Division as may then be there, to answer to the said charge, and to be further dealt with according to law. (*Vide Form (C).*)

The summons must be in writing, and must be signed by the Justice or Justices issuing it, and sealed by him or them. (*Vide s. 13.*)

A constable or peace officer alone can serve such summons, the service is effected in such case by the constable or peace officer delivering to the party personally the original writ of summons, or if the said party cannot be conveniently met with, by leaving the same for him with some person at his last or usual place of abode. It is to be remarked that where the service is not personal, but is at the last or usual place of abode of the party summoned, care must be exercised by the constable or peace officer serving, not to leave the summons with a child of tender years, or with a person unlikely to deliver it to the party to whom it is directed.* (*Vide s. 14.*)

If after due service of such summons, the party to whom it is directed does not appear at the time and place for his appearance therein mentioned, the Justice or Justices then and there being, may cause the constable or peace officer

* Glens Jervis Acts, p. 18.

who made the service, to depose before him or them as to the mode in which it was effected (*vide* s. 15), and thereupon may issue his or their warrant to apprehend the party charged in the Form (B), and bring him before him or them or before some other Justice or Justices of the Peace for the same Territorial Division to answer the charge in the complaint or information mentioned and to be further dealt with according to law. (*Vide* s. 16.)

But at all times, either before or after the time mentioned in the summons for the appearance of the accused, the Justice or Justices may issue a warrant in the Form (A) for his apprehension. This provision is intended to facilitate the apprehension of offenders who may make preparations to evade justice after a summons has issued against them.*

In all cases where the summons has issued upon a parole, information or complaint, a warrant in the Form (D) may issue after proof of service of summons, on the default of the person to whom such summons is directed to appear; but if it is decided to issue the Warrant (B) after the issue of a summons on a parole information or complaint allowed by some particular statute, it is necessary that an information or complaint in writing, supported or substantiated, as directed by s. 9 should be laid before the Justice or Justices required to issue the warrant.

Any number of persons may be included in a warrant or summons.

* In England, as already mentioned, a summons issuing on a parole information without being supported by oath or affirmation, it was necessary ere the Warrant (A) could issue that an information in writing under oath or affirmation should be exhibited.

As to indictable offences committed on the high seas, &c.

3. In all cases of indictable offences committed on the high seas, or in any creek, harbour, haven or other place, in which the Admiralty of England have or claim to have jurisdiction, and in all cases of offences committed on land, beyond the seas for which an indictment may be preferred or the offender may be arrested in Canada, any one or more Justice or Justices for any Territorial Division in which any person charged with having committed, or being suspected to have committed any such offence, shall be or be suspected to be, may issue his or their Warrant (D 2) to apprehend such person, to be dealt with as therein and hereby directed.

The jurisdiction of the Admiralty, according to the jurisprudence of England, extends over the high seas and the harbours, creeks and havens of foreign countries, but not to the harbours, creeks and havens of its own dominions; possessing Courts having ordinary jurisdiction; in the latter case the ordinary common law courts have exclusive jurisdiction.

By the act to amend the Merchant Shipping Act of 1854, the 18 & 19 Vic., c. 91, s. 21, it is provided that "if any
" person being a British subject charged with having com-
" mitted any crime or offence, on board any British ship on
" the high seas, or in a foreign port or harbour, or if any
" person not being a British subject charged with having
" committed any crime or offence on board any British ship
" on the high seas, is found within the jurisdiction of any
" Court of Justice in Her Majesty's Dominions, which would

"have had cognizance of such crime or offence, if committed within the limits of its ordinary jurisdiction, such Court shall have jurisdiction to hear and try the case, as if such crime or offence had been committed within such limits; provided that nothing contained in this section shall be construed to alter or interfere with the act of the thirteenth year of Her present Majesty, chapter ninety-six," and by the 30 & 31 Vic., c. 124, s. 11, it is provided that "if any British subject commits any crime or offence on board any British ship, or on board any foreign ship to which he does not belong, any Court of Justice in Her Majesty's Dominions which would have had cognizance of such crime or offence, if committed on board a British ship within the limits of the ordinary jurisdiction of such Court, shall have jurisdiction to hear and determine the case, as if the crime or offence had been committed as last aforesaid."

If a foreigner be taken on board a British ship and therein detained against his will, and whilst there commits an offence against British law, he is amenable to that law, if the act constituting the offence was not done in order to effect his escape from illegal custody.

A person is found within the jurisdiction of a Court of Justice within the meaning of the foregoing cited section, when he is actually present there, whether he has come within such jurisdiction voluntarily, or has been brought there against his will. (*Reg. vs. Lopez and Rv. Sattler* 1 Dears & B. C. C. 525).

Warrant to apprehend party against whom an indictment is found.

4. In case an indictment be found by the Grand Jury in any Court of Criminal Jurisdiction, against any person then at large, and whether such per-

son has been bound by any Recognizance to appear to answer to any such charge or not, and in case such person has not appeared and pleaded to the indictment, the person who acts as Clerk of the Crown or Chief Clerk of such Court shall, at any time at the end of the term or sittings of the Court, at which the indictment has been found, upon application of the Prosecutor, or of any person on his behalf, and on payment of a fee of twenty cents, grant to such Prosecutor or person a certificate (F) of such indictment having been found; and upon production of such Certificate to any Justice or Justices of the Peace for the Territorial Division in which the offence is in the indictment alleged to have been committed, or in which the person indicted resides, or is supposed or suspected to reside or be, such Justice or Justices shall issue his or their Warrant (G) to apprehend the person so indicted, and to cause him to be brought before such Justice or Justices or any other Justice or Justices for the same Territorial Division, to be dealt with according to law.

Commitment, or bail.

5. If the person be thereupon apprehended and brought before any such Justice or Justices, such Justice or Justices, upon its being proved upon oath or affirmation before him or them, that the person so apprehended is the person charged and named in the indictment, shall, without further inquiry or examination, commit (H) him for trial

or admit him to bail in manner hereinafter mentioned.

Under this clause the Justice or Justices before whom the party is brought after apprehension on the warrant, may either commit him for trial, or admit him to bail in the manner afterwards mentioned in the statute; but unfortunately the 52 & 56 sections only apply to those cases apparently where the Justice or Justices presided at the adduction of the evidence against the person arrested, and it is only when that evidence does not furnish such a strong presumption of guilt as to warrant his committal for trial, that two Justices can admit him to bail in certain cases of felony; in all cases of misdemeanor one Justice who has heard the evidence can and in fact must admit to bail; but in the case of a party apprehended under the preceding clause, the Justice has merely before him the certificate granted by the officer of the Court in which the indictment was found, and consequently has no evidence before him whereon to form an opinion of the guilt or innocence of the party apprehended, so that in all cases of felony or suspicion of felony, it is better to commit, leaving the party to his remedy by *habeas corpus* or application under section 61. In misdemeanors, on the other hand, the Justice may admit to bail, requiring heavy or light security, according to the class of the misdemeanor charged.

If person indicted be already in prison for some other offence, a Justice may order him to be detained until removed by writ of "habeas corpus" or otherwise, or discharged.

6. If the person so indicted is confined in any gaol or prison for any other offence than that charged in the indictment at the time of such

application and production of such Certificate to the Justice or Justices, such Justice or Justices, upon its being proved before him or them upon oath or affirmation, that the person so indicted and the person so confined in prison are one and the same person, shall issue his or their Warrant (I) directed to the Gaoler or Keeper of the gaol or prison in which the person so indicted is then confined, commanding him to detain such person in his custody, until, by Her Majesty's Writ of *Habeas Corpus*, or by order of the proper Court he be removed therefrom for the purpose of being tried upon the said indictment, or until he be otherwise removed or discharged out of his custody by due course of law

Not to prevent Bench Warrants.

7. Nothing in this Act contained shall prevent the issuing or execution of Bench Warrants, whenever any Court of competent jurisdiction thinks proper to order the issuing of any such Warrant.

Warrant may be issued on Sunday.

8. Any Justice or Justices of the Peace may grant or issue any Warrant as aforesaid, or any Search Warrant, on a Sunday as well as on any other day.

A Justice cannot issue a Summons on a Sunday. Of course, the Justice having the right to issue a Warrant or a Search Warrant, has also the power of receiving informations or complaints in such cases, and of swearing the informants or complainants thereto on Sundays.

9. In all cases when a charge or complaint for an indictable offence is made before any Justice or Justices, if it be intended to issue a Warrant in the first instance against the party charged, an information and complaint thereof (A) in writing on the oath or affirmation of the informant, or of some witness or witnesses in that behalf, shall be laid before such Justice or Justices.

Vide observations on s. 1.

And so in case of Summons, unless otherwise provided.

10. When it is intended to issue a Summons instead of a Warrant in the first instance, the information and complaint shall also be in writing, and be sworn to or affirmed in manner aforesaid, except only in cases where by some Act or Law it is specially provided that the information and complaint may be by parole merely, and without any oath or affirmation to support or substantiate the same.

Vide observations on s. 2.

No objection allowed for alleged defect.

11. No objection shall be taken or allowed to any information and complaint for any alleged defect therein in substance or in form, or for any variance between it and the evidence adduced on the part of the prosecution, before the Justice or Justices who take the examination of the witnesses in that behalf.

The provisions of this clause do away with the possibility

of technical objections being taken, either to the information or complaint or to the case, as made out after the close of the evidence for the prosecution. The information or complaint in charges of indictable offences is taken, not for the purpose of being a record in the case, but to enable the Justice to judge whether or not, he should interfere, and to guide his discretion as to the propriety of issuing a Summons or a Warrant, (Saunders, p. 12; Glen, p. 17; Stone, 229), so that after the Summons or Warrant issues, the information or complaint ceases to be of any importance. Such being the case, it necessarily follows, that if the evidence taken before the Justice reveals an indictable offence, committed by the party summoned or apprehended, though it may not be the same offence as the one charged in the information or complaint, he is bound to adjudicate upon the evidence, and to discharge, bind over, or commit the accused, as pointed out by s. 52, 56 and 47.

In what cases Justice may grant a Warrant to search dwelling houses, &c.

12. If a credible witness proves upon oath (E 1) before a Justice of the Peace, that there is reasonable cause to suspect that any property whatsoever, on or with respect to which any larceny or felony has been committed, is in any dwelling house, outhouse, garden, yard, croft or other place or places, the Justice may grant a Warrant (E 2) to search such dwelling house, garden, yard, croft or other place or places, for such property, and if the same, or any part thereof be then found, to bring the same and the person or persons in whose possession such

house or other place then is, before the Justice granting the warrant or some other Justice for the same Territorial Division.

In many cases, by means of a Search Warrant, proof of the guilt of a person receiving stolen goods, for instance, is satisfactorily made by the discovery of the goods in his possession, and the warrant itself containing the authority to arrest the possessor, it is a much better mode of proceeding where there is a likelihood of finding such goods, than a warrant to apprehend the suspected party. But care should be exercised ere issuing a Search Warrant, as the search of a person's premises is a strong measure, which, if successful, can always be justified, but which, if unsuccessful and undertaken without reasonable cause, exposes the person procuring the Search Warrant to heavy damages, and if, unfortunately, it be drawn in an illegal form, and a search be made under it, the Justice who signed it would be liable, as well as the parties who put it in force, to an action of damages. (*Elsee vs. Smith*, 2 Chit. 304.)

In all cases where a Search Warrant issues, the prosecutor or some other person who can identify the goods specified in the warrant, should accompany the constable making the search.

Upon complaint, Justice may issue summons or warrant for appearance of party charged.

13. Upon information and complaint as aforesaid, the Justice or Justices receiving the same may, if he or they think fit, issue his or their Summons or Warrant as hereinbefore directed, to cause the person charged to be and appear as therein and thereby directed; and every

Summons (C) shall be directed to the party so charged by the information, and shall state shortly the matter of such information, and shall require the party to whom it is directed to be and appear at a certain time and place therein mentioned, before the Justice who issues the Summons, or before such other Justice or Justices of the Peace for the same Territorial Division as may then be there, to answer to the charge, and to be further dealt with according to law."

How Summons to be served.

14. Every such Summons shall be served by a Constable or other peace officer upon the person to whom it is directed, by delivering the same to the party personally, or if he cannot conveniently be met with, then by leaving the same for him with some person at his last or usual place of abode."

Constables, &c., to attend and prove service.

15. The Constable or other peace officer who serves the same shall attend at the time and place, and before the Justice or Justices in the Summons mentioned, to depose, if necessary, to the service of the Summons."

If party summoned does not attend, Justice may issue a warrant.

16. If the person served does not appear before the Justice or Justices, at the time and place mentioned in the Summons, in obedience to the same, the Justice or Justices may issue

his or their Warrant (D) for apprehending the party so summoned, and bringing him before him or them, or before some other Justice or Justices for the same Territorial Division, to answer the charge in the information and complaint mentioned, and to be further dealt with according to law."

Vide observations on s. 2, ante p. 57.

Warrant to apprehend parties to be under the hand and seal of Justice: and to whom addressed, &c.

17. Every Warrant (B) hereafter issued by any Justice or Justices of the peace to apprehend any person charged with any indictable offence, shall be under the hand and seal, or hands and seals, of the Justice or Justices issuing the same, and may be directed to all or any of the Constables or other peace officers of the Territorial Division within which the same is to be executed, or to any such Constable and all other Constables or peace officers in the Territorial Division within which the Justice or Justices issuing the same has jurisdiction, or generally to all the Constables or Peace Officers within such last mentioned Territorial Division; and it shall state shortly the offence on which it is founded, and shall name or otherwise describe the offender, and it shall order the persons or persons to whom it is directed to apprehend the offender, and bring him before the Justice or Justices issuing the Warrant, or before some other Justice or Justices

of the Peace for the same Territorial Division, to answer to the charge contained in the information, and to be further dealt with according to law.

Warrant may remain in force until executed.

18. It shall not be necessary to make the warrant returnable at any particular time, but the same may remain in force until executed.

The form given in the appendix (B) is general in its address "To all or any of the Constables or other Peace Officers in the District (or County, United Counties, or as the case may be) of " and should always be followed. If directed to any constable by name it can only be executed by him, but if the direction be general, all constables and Peace Officers within the Territorial Division may and in fact are bound to execute it. (*Vide* s. 20.)

A constable apprehending the person charged cannot discharge himself of his prisoner save by taking him before a magistrate. (2 Hawk c. 13, s. 7.)

How and where a warrant may be executed.

19. Such Warrant may be executed by apprehending the offender at any place in the Territorial Division within which the Justice or Justices issuing the same have jurisdiction, or in case of fresh pursuit, at any place in the next adjoining Territorial Division, and within seven miles of the border of the first mentioned Territorial Division, without having the Warrant backed, as hereinafter mentioned.

There is no necessity, supposing the person charged has escaped into an adjoining Territorial Division, to have the warrant backed or to place it in the hands of a constable of

the Division into which he has so escaped when the place wherein he is, lies within the distance of seven miles of the border of the Territorial Division, within which the warrant issued.

The seven miles will be measured, not by the nearest practicable road, but by a straight line from point to point as the crow flies (*Lake vs. Butler*, 24 L. J. R. (N. S.) Q. B. 273; *Stokes vs. Grissell* 23 L. J. R. (N. S.) C. P. 141; *Reg. vs. Saffron Waldon*, 9 Q. B. 76; *Duignan v. Walker* 5 Jur. (N. S.) 976).

All Warrants for indictable offences can be executed on Sunday (*Rawlins vs. Ellis* 16. M. & W. 172).

On what conditions constables, &c., may execute warrant.

20. In case any Warrant be directed to all Constables or other Peace Officers in the Territorial Division within which the Justice or Justices have jurisdiction, any Constable or other Peace Officer for any place within such Territorial Division may execute the Warrant at any place within the jurisdiction for which the Justice or Justices acted when he or they granted such Warrant, in like manner as if the Warrant had been directed specially to such Constable by name, and notwithstanding the place within which such Warrant is executed be not within the place for which he is Constable or Peace Officer.

Vide observations on s. 18.

No objection allowed for alleged defect in form or substance.

21. No objection shall be taken or allowed to any Summons or Warrant for any defect therein

in substance or in form, or for any variance between it and the evidence adduced on the part of the prosecution, before the Justice or Justices who takes the examination of the Witness in that behalf as hereinafter mentioned.

If variance appears important, the Justices may adjourn the case.

22. But if it appears to the Justice or Justices that the party charged has been deceived or misled by any such variance, such Justice or Justices, at the request of the party charged, may adjourn the hearing of the case to some future day, and in the meantime may remand the party, or admit him to bail as hereinafter mentioned.

s. 21 evidently is meant to have the same application as s. 11 though if neither the information, complaint, summons or warrant discloses an indictable offence, it is hardly just that the party charged should be forced to submit to an examination; but the idea seems to be that when a person is brought before a Justice of the Peace on a summons or a warrant, though no indictable offence be therein disclosed, that he should go on with the examination of witnesses and if an indictable offence be thereby disclosed, he may, if the party charged in his opinion has been deceived or misled, on the request of the party so charged, adjourn the case to some future day, and remand the party or admit him to bail as mentioned in ss. 41, 42, 44.

Regulations as to the backing of warrants.

Effect of such backing.

23. If the person against whom any Warrant has been issued, cannot be found within the juris-

diction of the Justice or Justices by whom the same was issued, or if he escapes into, or is supposed or suspected to be, in any place within Canada, out of the jurisdiction of the Justice or Justices issuing the Warrant, any Justice of the Peace within the jurisdiction of whom the person so escapes, or in which he is or is suspected to be, upon proof alone being made on oath or affirmation of the handwriting of the Justice who issued the same, without any security being given, shall make an endorsement (K) on the Warrant, signed with his name, authorizing the execution of the Warrant within the jurisdiction of the Justice making the endorsement, and such endorsement shall be sufficient authority to the person bringing such Warrant, and to all other persons to whom the same was originally directed, and also to all Constables and other Peace Officers of the Territorial Division where the Warrant has been so endorsed, to execute the same in such other Territorial Division, and to carry the person against whom the Warrant issued, when apprehended, before the Justice or Justices of the Peace who first issued the Warrant, or before some other Justice or Justices of the Peace for the same Territorial Division, or before some Justice or Justices of the Territorial Division, in which the offence mentioned in the Warrant appears therein to have been committed.

The endorsement provided for by this clause is commonly

called backing. After being backed the warrant can be executed not only by its original bearer but also by all constables and peace officers as well of the Territorial Division whence it issued as of that wherein it was backed. It can moreover be backed in every Division in Canada, and if the offender return to the Division whence it issued, he can still be arrested under it there.

When the Justice who issued the warrant is also a Justice for the Territorial Division within which the person charged is suspected to have taken refuge, he can endorse thereupon an authority to arrest in such last mentioned Division the person so charged.

Duty of constable in case of arrest.

24. If the Prosecutor or any of the witnesses for the prosecution be then in the Territorial Division where such person has been apprehended, the Constable, or other person or persons who have apprehended him may, if so directed by the Justice backing the warrant, take him before the Justice who backed the warrant, or before some other Justice or Justices for the same Territorial Division or place; and the said Justice or Justices may thereupon take the examination of such prosecutor or witnesses, and proceed in every respect in manner hereinafter directed with respect to persons charged before a Justice or Justices of the Peace, with an offence alleged to have been committed in another Territorial Division than that in which such persons have been apprehended.

The person so arrested cannot be brought before the Justice who backed the warrant or any other Justice of the

Division within which such warrant was backed, unless the warrant be specially indorsed requiring the constable to bring the party before the Justice indorsing. The mode of proceeding in case such person apprehended be brought before a Justice of the Division within which the warrant of apprehension has been backed is pointed out by s. 46, s. 47.

Power to Justices to summon witness to attend, and give evidence.

25. If it be made to appear to any Justice of the Peace, by the oath or affirmation of any credible person, that any person within the Dominion is likely to give material evidence for the prosecution and will not voluntarily appear for the purpose of being examined as a witness at the time and place appointed for the examination of the witnesses against the accused, such Justice shall issue his summons (L 1) to such person, requiring him to be and appear at a time and place therein mentioned, before the said Justice, or before such other Justice or Justices of the Peace for the same Territorial Division as may then be there, to testify what he knows concerning the charge made against the accused party.

If summons be not obeyed, warrant may be issued to compel attendance.

26. If any person so summoned neglects or refuses to appear at the time and place appointed by the Summons, and no just excuse be offered for such neglect or refusal, (after proof upon oath or affirmation of the summons having been served

upon such person, either personally or left with some person for him at his last or usual place of abode,) the Justice or Justices before whom such person should have appeared, may issue a Warrant (L 2), to bring such person, at a time and place to be therein mentioned before the Justice who issued the Summons, or before such other Justice or Justices of the Peace for the same Territorial Division as may then be there, to testify as aforesaid, and the said Warrant may if necessary, be backed as hereinbefore mentioned, in order to its being executed out of the jurisdiction of the Justice who issued the same.

A Justice of the Peace ere issuing a subpoena requiring the attendance of a witness, must be satisfied by the oath or affirmation of some credible person: 1. that the witness is within the Dominion of Canada: 2. that he is likely to give material evidence for the prosecution: 3. that he will not voluntarily appear for the purpose of being examined as a witness at the time and place appointed for the examination of witnesses against the accused.

A witness for the accused cannot be subpoenaed.

The subpoena or summons to a witness should be addressed to him by his name and description, the day on which he is thereby ordered to appear should be stated as well as the place, giving such a designation or description thereof as that he can easily find it if in a city, town, village or parish. It should also be dated signed and sealed by the Justice.

In the event of the person served with a subpoena neglecting or refusing to appear, the Justice can issue a warrant for his apprehension, the formalities to be observed ere such

warrant can be issued are the same as prescribed by s. 2 to precede the issue of the warrant where a person has failed after service to appear on an ordinary summons (*vide* observations on s. 2); and such warrant can be backed as provided by s. 23 (*vide* observations on s. 23.)

In certain cases warrant may issue in first instance.

27. If the Justice be satisfied by evidence upon oath or affirmation that it is probable the person will not attend to give evidence unless compelled so to do, then, instead of issuing such Summons, the Justice may issue his Warrant (L 3) in the first instance, and the Warrant, if necessary, may be backed as aforesaid.

The affidavit or affirmation in this case must be stronger than the one required under s. 25; it must show that it is probable that the person whose evidence is required will not attend to give evidence unless *compelled* to do so, in all other respects it should be similar.

A witness cannot refuse to attend upon being served with a summons or a subpoena until his expenses are paid (R. vs. James I. C. & P. 322.

Persons appearing on summons and refusing to be examined may be committed.

28. If on the appearance of the person so summoned, either in obedience to the Summons or by virtue of the Warrant, he refuses to be examined upon oath or affirmation concerning the premises, or refuses to take such oath or affirmation, or having taken such oath or affirmation, refuses to answer the questions concerning the premises then put to him without giving any just excuse

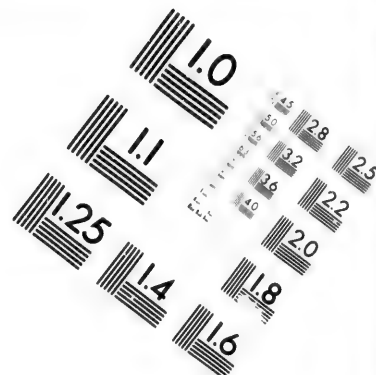
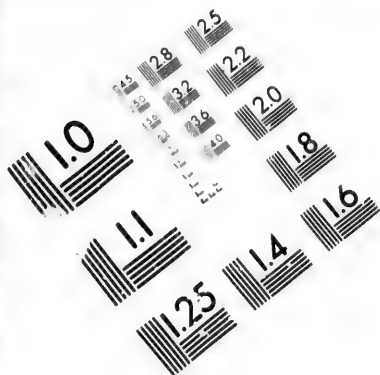
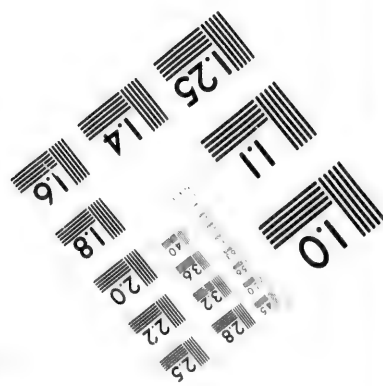
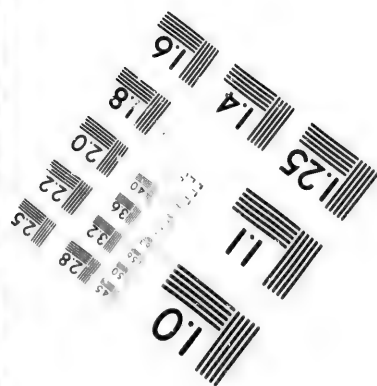
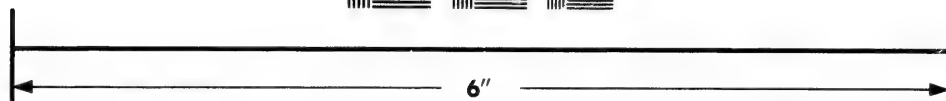
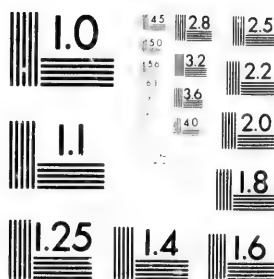
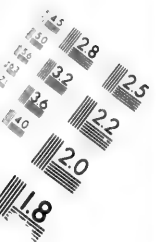


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for such refusal, any Justice of the Peace then present and there having jurisdiction, may, by Warrant (L 4), commit the person so refusing to the Common Goal or other place of confinement, for the Territorial Division where the person so refusing then is, there to remain and be imprisoned for any time not exceeding ten days, unless he in the meantime consents to be examined and to answer concerning the premises.

The question of just excuse, offered by a person summoned as a witness or brought up by virtue of the warrants provided for by s. 26. s. 27 for refusing to be examined upon oath or affirmation, or to take such oath or affirmation, or to answer questions put to him pending his examination requires some attention : 1. The husband cannot give evidence for or against his wife ; the wife cannot give evidence for or against her husband ; so that if either husband or wife be the party charged with an indictable offence the other conjoint cannot be examined as a witness in the proceeding, save and except in those cases where the offence is committed on the person of the one by the other spouse ; 2. Idiots and children of such tender years as to be ignorant of the obligations of an oath cannot be examined as witnesses ; 3. A person cannot be compelled to answer any question tending to criminate himself or herself. (*vide ante* p. 29. Confession Privileged Com. Attys Gov. Secrets).

4 A priest cannot be forced to reveal the secrets of the confessional ; this is especially true of priests of the Roman Catholic faith, but many cases can be cited where judges have refused to force Protestant clergymen to reveal secrets confided to them by penitents in confession as recognized by

the Church to which the ministers belonged (*vide* Taylor on Ev. Powell on Ev. for other cases—Attorney Counsel—Government Officers *ante* p. 29.) It is doubtful whether a witness who attends voluntarily (not upon a summons or warrant) and refuses to be sworn or to give evidence, or to answer pertinent questions can be committed (Cohen vs. Morgan 6 D & R. 8), but it is submitted that such power exists *vide* Cropper vs. Horton 4 D. & R. M. C. 42; & D. & R. 166. In re Howland 1 Dowl. N. S. 835. In the event of the Justice determining on committing such witness for any such refusal the warrant may be in the form (No. 24).

It is to be remembered that if the question put to the witness be not pertinent to the matter then under investigation, he cannot be committed for refusing to answer it.

Examination of witness to be in the presence of the accused, &c.

29. In all cases where any person appears or is brought before any Justice or Justices of the Peace charged with any indictable offence, whether committed in Canada or upon the high seas, or on land beyond the sea, and whether such person appears voluntarily upon Summons or has been apprehended, with or without Warrant, or is in custody for the same or any other offence, such Justice or Justices before he or they commit such accused person to prison for trial, or before he or they admit him to bail, shall, in the presence of the accused person, (who shall be at liberty to put questions to any witness produced against him,) take the statement (M) on oath or affirmation of those who know the facts and circumstances of the

case, and shall put the same in writing, and such depositions shall be read over to and signed respectively by the witnesses so examined, and shall be signed also by the Justice or Justices taking the same.

Under this clause the mode of examining witnesses is the same in all preliminary investigations into charges of indictable offences whether they be treasons, felonies, or misdemeanors, and wherever they may have been committed.

The witness previous to his examination being taken should swear or affirm in presence of the Justice to speak the truth, the whole truth and nothing but the truth in answer to the questions put to him touching the offence then under investigation, the Justice should then in presence of the accused person take the statement of the witness reducing it to writing as he proceeds, and at the close thereof putting any questions, answers to which in his opinion would tend to throw light on the facts and circumstances of the case; the accused person should then be asked by the Justice if he has any questions in cross-examination to put to the witness, if he declares that he does not wish to cross examine, that fact should be noted in the deposition, but if he declares that he desires to cross-examine, his questions when pertinent to the matter in issue must be answered by the witness and must be reduced to writing by the Justice together with the answers of the witness thereto. The general practice in the Province of Quebec is to take down both questions and answers in cross-examination in writing. Care must be taken to distinguish between the examination and cross examination of the witness; if necessary the witness can be re-examined, the deposition must then be read over to and signed by the witness and by

the Justice taking the same, all in the presence of the accused (Reg. vs. Watts 9 L. T. (N. S.) 453).

The Justice is bound to examine all the parties who know the facts and circumstances of the case. The depositions of the witnesses should be taken carefully, as far as possible the very words made use of should be preserved. It is not however necessary to take down all that a witness may state, since that which is clearly irrelevant or not admissible as evidence ought not to be admitted. If however any doubt should arise as to its inadmissibility, the better plan will be to take it and leave it to another tribunal to decide whether it shall be used or not.

“ There is no duty devolving upon Justices of greater practical importance than that of seeing that the depositions of the witnesses upon whose evidence they commit a party to trial are carefully impartially and formally taken. By a neglect of this duty, the cruelest injustice may be done and the innocent may be involved in the punishment due alone to the guilty. Those who are at all familiar with the practice of the criminal law are aware that the depositions taken by the committing Justices may in the event of the subsequent death or absence through illness of the witnesses be read upon the trial as evidence against the prisoner, and that here even in a capital case an accused may be convicted entirely upon the proof contained in the depositions alone.” (39 L. T. 173).

Justice to administer oath or affirmation.

Depositions of persons dying, absent, &c. how to be used.

30. The Justice or Justices shall, before any witness is examined, administer to such witness the usual oath or affirmation, which such Justice or Justices are hereby empowered to do; and if

upon the trial of the person accused, it be proved upon the oath or affirmation of any credible witness, that any person whose deposition has been taken as aforesaid, is dead, or is so ill as not to be able to travel, or is absent from Canada, and if it be also proved that such deposition was taken in presence of the person accused, and that he, his Counsel or Attorney, had a full opportunity of cross-examining the witness, then if the deposition purports to be signed by the Justice by or before whom the same purports to have been taken, it shall be read as evidence in the prosecution without further proof thereof, unless it be proved that such deposition was not in fact signed by the Justice purporting to have signed the same

Vide observations on s. 29.

After the examination of the accused, Justice to read depositions taken against him, and caution him as to any statement he may make.

31. After the examination of all the witnesses for the prosecution have been completed, the Justice, or one of the Justices by or before whom the examinations have been completed, shall, without requiring the attendance of the witnesses, read or cause to be read to the accused, the depositions taken against him, and say to him these words, or words to the like effect : " Having heard the evidence, do you wish to say any thing in answer to the charge? You are not obliged to say any thing unless you desire to do so, but whatever

"you say will be taken down in writing, and may be given in evidence against you upon your trial;" and whatever the prisoner then says in answer thereto shall be taken down in writing (N) and read over to him, and shall be signed by the Justices or Justices, and kept with the depositions of the witnesses, and shall be transmitted with them as hereinafter mentioned.

Explanations to be made to the accused party.

32. The Justice or Justices shall, before the accused person makes any statement, state to him and give him clearly to understand that he has nothing to hope from any promise of favor, and nothing to fear from any threat which may have been held out to him to induce him to make any admission or confession of his guilt, but that whatever he then says may be given in evidence against him upon his trial, notwithstanding such promise or threat.

Not to prevent giving in evidence confession, &c.

33. Nothing herein contained shall prevent any prosecutor from giving in evidence any admission or confession, or other statement made at any time by the person accused or charged, which by law would be admissible as evidence against him.

Examinations may be given in evidence.

34. Upon the trial of the accused person, the examinations may if necessary be given in evidence against him without further proof thereof, unless it be proved that the Justice or Justices

purporting to have signed the same, did not in fact sign the same.

The object of these clauses is to insure, for the information of the jury at the trial, a candid and truthful statement from the prisoner of the facts of the case; but in order to obtain such statement it is necessary to do away with any impression previously produced upon the prisoner's mind by threats or promises; it is also necessary to inform him that he is at perfect liberty to make any statement he pleases in answer to the charge, or to refrain from saying anything and to warn him that anything he may say shall be taken down in writing, and may be given in evidence against him at the trial.

In all cases the additional caution contained in s. 32 should be given, as in the event of a previous confession made, after a promise or threat, being then reiterated without that additional caution having been given, the confession would in all probability be held inadmissible on the trial (*Reg. vs. Sansome* 1 Den. C. C. 545).

Any statements of the accused amounting to an admission or confession of any of the facts constituting the charge against him made spontaneously without threat, promise, or inducement from any person in authority or person directly injured by the crime, are admissible; so are confessions made to a person not in authority, under the influence of such promise, threat, or inducement, made or held out by any person not in authority.

A constable, a master or mistress whose chattels for instance have been stolen, a magistrate are all persons in authority (*Oke's Magisterial Syn.* p. 818 and note 16; *Stones Petty Sess.* 123).

Any statement made by the accused before the magistrate during the investigation and examination and previous to the

close of the latter, unless induced by promises or threats made by person, in authority, can be given in evidence. (Reg. vs. Stripp. 1 Dears. CC. p. 648).

Any fact discovered in consequence of information obtained by a promise, threat, or inducement may be given in evidence. (Rex. vs. Warwickshall 1 Leach 263).

Place of examination not an open Court, and no person to remain without permission.

35. The room or building in which the Justice or Justices take the examination and statement shall not be deemed an open Court for that purpose; and the Justice or Justices, in his or their discretion, may order that no person, shall have access to or be or remain in such room or building without the consent or permission of such Justice or Justices, if it appear to him or them that the ends of justice will be best answered by so doing.

This clause is based upon the idea that preliminary investigations are but ministerial acts of the Justice. No exception is made in favor of the Counsel or Attorney of the accused who can be excluded if the Justices see fit (Cox vs. Coleridge 2 D. & R. 86; Rex vs. Borrow 3 B. & A. 432; Rex. vs. Staffordshire J J. 1 Chitty 218; Collier vs. Hicks 2 B. & Ad. 663). On this point the observations of Mr. Saunders are so much to the purpose that they are here reproduced.

“ Under the provisions of this clause, therefore, the Justices
“ have power to conduct their proceedings in private, and to
“ exclude all persons even including the professional advisers
“ of either of the parties. The section seems certainly to
“ contemplate that the exclusion will only take place when it
“ shall appear that the ends of Justice will be best answered

“ by it, but it is difficult to conceive any possible case in which
“ the ends of justice can best be answered by refusing an
“ accused party the assistance of a legal adviser.

“ As the law now stands the depositions of the witnesses
“ taken by the magistrate are receivable in evidence on the trial
“ in the event of the death of such witnesses, or their being
“ too ill to travel, the importance therefore to the accused of
“ being enabled to cross-examine through the agency of a
“ legal adviser, is as obvious as it is great. Common Justice
“ declares that at a time of such peril as that of the examination
“ of the witnesses by the committing justice, the accused
“ party ought not to be deprived of legal professional assistance.
“ There is really only one argument of any apparent weight that
“ can be advanced in opposition to the permission suggested,
“ and that consists in the possibility of the professional adviser
“ taking advantage of what may transpire in the justice room
“ to warn others not yet in custody, or otherwise to defeat the
“ ultimate ends of Justice. This argument however, becomes
“ puerile in the extreme, when it is remembered that counsel
“ and attorneys are members of a honourable profession, and
“ are directly amenable, in cases of professional obliquity to
“ the all powerful censure of the superior courts, and would
“ therefore scarcely lend themselves to a proceeding which must
“ necessarily result in their disgrace and ruin- But whether
“ or not the interests of the public might be endangered is a
“ consideration of trivial importance, when the sacred cause of
“ justice to an accused is involved, indeed it may well be
“ questioned if justice to the public can ever be promoted by
“ doing injustice to any one of its members. It would seem
“ however that the omission of the Legislature in the 11 and
“ 12 Vict. c. 42, to make an exception in favour of the legal
“ advisers of the accused, was more accidental than intentional,

" for upon attention being drawn to this omission in the statute.
 " the Legislature in the corresponding act for Ireland, passed
 " in the following year (12 and 13 Viet. c. 68.) whilst simi-
 " larly enacting by section 19 for power to exclude the public,
 " expressly reserves the right of the counsel or attorney of any
 " person then being in such court as a prisoner to be present.
 " So that upon this point without there being any motive for
 " such a distinction, a distinction clearly exists, but one never-
 " theless which is to be attributed to inadvertency since there
 " cannot be any possible reason for giving to a prisoner in Ire-
 " land a right which is debarred to a prisoner in England.

" In practice it rarely occurs that either the prosecutor or the
 " prisoner is prohibited from having the assistance of a profes-
 " sional adviser, and when the pressing reasons for permitting
 " the assistance coupled with the partial recognition of the
 " practice as contained in the 17th section, which section direct-
 " ly refers to the cross-examination of the witnesses by the
 " counsel or attorney of the accused are taken into considera-
 " tion it is hoped that no bench of magistrates will ever refuse
 " an application of the kind."

Power to bind over the prosecutors and witnesses.

36. Any Justice or Justices, before whom any
 witness is examined, may bind by Recognizance
 (O 1) the Prosecutor, and every such witness,
 (except married women and infants)* who shall

* The words "except married woman and infants who shall
 find security for their appearance" should it is submitted form
 the parenthesis not merely the words "except married women
 find infants"; it is to say the least of it very doubtful whether
 the personal recognizance of a married woman or an infant is
 valid and therefore if the words relative to security be considered
 as applicable solely to minors and married women, the first por-
 tion of s. 36 becomes intelligible, otherwise construed it is confused.

find security for their appearance, if the Justice or Justices see fit, to appear at the next Court of competent Criminal Jurisdiction at which the accused is to be tried, then and there to prosecute, or prosecute and give evidence, or to give evidence, as the case may be, against the party accused, which Recognizance shall particularly specify the place of residence and the addition or occupation of each person entering into the same.

Recognizances to be subscribed to by Justices, &c.

37. The Recognizance, being duly acknowledged by the person entering into the same, shall be subscribed by the Justice or Justices before whom the same is acknowledged, and a notice (O 2) thereof, signed by the said Justice or Justices, shall at the same time be given to the person bound thereby.

Recognizances to be transmitted to the Court in which the trial is to be had.

38. The several Recognizances so taken, together with the written information (if any), the depositions, the statement of the accused, and the Recognizance of Bail, (if any) shall be delivered by the said Justice or Justices, or he or they shall cause the same to be delivered to the proper Officer of the Court in which the trial is to be had, before or at the opening of the Court on the first day of the sitting thereof, or at such other time as the Judge, Justice or person who is to preside at such Court, or at the trial orders and appoints.

The witnesses are to be bound over by the recognizances to appear at the next Court of competent Criminal Jurisdiction at which the accused is to be tried. *vide* observations on s. 52 and s. 56.

The recognizances intended are the personal recognizances of the persons so bound over, the practical mode of taking the recognizances is the following: the Justice, or his clerk in the Justice's presence states to the party bound (and to his sureties if there are any) the substance of the recognizance, the parties bound assent to but do not sign the recognizances, the Justice alone affixing his signature thereto, and the notice is then given in the form (O 2) to the prosecutor or witnesses; care must be taken to suit the recognizance to the situation of the party bound according to the variations of the form (O 1).

In Quebec as all prosecutions are conducted by Government, binding over the so called prosecutor to prosecute is in almost every case an empty form.

Witness refusing to enter into recognizances may be committed.

39. If any witness refuses to enter into Recognizance, the Justice or Justices of the Peace by his or their Warrant (P 1,) may commit him to the common gaol for the Territorial Division in which the accused party is to be tried, there to be imprisoned and safely kept until after the trial of such accused party, unless in the meantime such witness duly enters into Recognizance before some one Justice of the Peace for the Territorial Division in which such Goal is situate.

Discharge for want of evidence, &c.

40. If afterwards, for want of sufficient evidence

in that behalf or other cause, the Justice or Justices before whom the accused party has been brought, do not commit him or hold him to bail for the offence charged, such Justice or Justices or any other Justice or Justices for the same Territorial Division, by his or their Order (P 2) in that behalf, may order and direct the Keeper of the gaol where the witness is in custody, to discharge him from the same, and such Keeper shall thereupon forthwith discharge him accordingly,

In the event of a witness so committed notifying any Justice for the Territorial Division within which he is imprisoned of his willingness to enter into the Recognizance provided by s. 36, it is the duty of such Justice to receive such Recognizance.

Power to Justice to remand the accused from time to time not exceeding eight days by warrant.

41. If from the absence of the witnesses, or from any other reasonable cause, it becomes necessary or advisable to defer the examination or further examination of the witnesses for any time, the Justice or Justices before whom the accused appears or has been brought, may, by his or their Warrant (Q 1) from time to time, remand the party accused for such time as by such Justice or Justices in his or their discretion may be deemed reasonable, not exceeding eight clear days at any one time, to the common gaol in the Territorial Division for which such Justice or Justices are then acting

Or for three days by verbal order.

42. If the remand be for a time not exceeding three clear days, the Justice or Justices may verbally order the Constable or other person in whose custody the accused party may then be, or any other Constable or person to be named by the Justice or Justices in that behalf to keep the accused party in his custody, and to bring him before the same or such other Justice or Justices as may be there acting, at the time appointed for continuing the examination.

But accused may be brought up at an earlier day.

43. Any such Justice or Justices may order the accused party to be brought before him or them, or before any other Justice or Justices of the Peace for the same Territorial Division, at any time before the expiration of the time for which such party has been remanded, and the Gaoler or Officer in whose custody he then is, shall duly obey order.

The Justice making the remand alone can order, before the expiration of the time for which the accused has been remanded that he be brought before him or some other Justice.

Party accused may be admitted to bail on recognizances.

44. Instead of detaining the accused party in custody during the period for which he has been so remanded, any one Justice of the Peace before whom such party has appeared or been brought, may discharge him, upon his entering into a Reco-

gnizance (Q 2, 3,) with or without a surety or sureties, at the discretion of the Justice, conditioned for his appearance at the time and place appointed for the continuance of the examination.

By the terms of this enactment it is entirely in the Justices' discretion in every case whether he will allow the accused to go on bail during an adjournment of the hearing. It is otherwise when the Justice has completed the examination and committed for trial, for then (as will be seen by s. 52. 56) the accused is in cases of misdemeanor entitled to bail, but in felonies he is not so entitled. As a general rule it may be said that in practice it is not usual on a remand (especially where the precise nature or extent of the charge is undeveloped) for magistrates to admit to bail in those cases in which an accused is not entitled to be bailed after committal, unless the amount of property involved is very small; in other cases it is (in great part from Oke's Syn. p. 806. n. 3).

If the accused does not appear according to his recognizances,

45. If the accused party does not afterwards appear at the time and place mentioned in the Recognizance, the said Justice or any other Justice of the Peace who may then and there be present, having certified (Q 4) upon the back of the Recognizance the non-appearance of such accused party, may transmit the recognizance to the Clerk of the Court where the accused person is to be tried, or the proper officer appointed by law, to be proceeded upon in like manner as other Recognizances, and such Certificate shall be deemed sufficient *prima facie* evidence of the non-appearance of the accused party.

The accused party should be called to appear by a Justice at the time and place mentioned in the Recognizance and on his default the Justice should follow out the course prescribed by this clause.

If a person be apprehended in one division for an offence committed in another, he may be examined in the former, and committed in the latter.

46. Whenever a person appears or is brought before a Justice or Justices of the Peace in the Territorial Division wherein such Justice or Justices have jurisdiction, charged with an offence alleged to have been committed by him within any Territorial Division in Canada wherein such Justice or Justices have not jurisdiction, such Justice or Justices shall examine such witnesses and receive such evidence in proof of the charge as may be produced before him or them within his or their jurisdiction; and if in his or their opinion, such testimony and evidence be sufficient proof of the charge made against the accused party, the Justice or Justices shall thereupon commit him to the Common Goal for the Territorial Division where the offence is alleged to have been committed, or shall admit him to bail as hereinafter mentioned, and shall bind over the prosecutor (if he has appeared before him or them) and the witnesses, by recognizances as hereinafter mentioned.

In all cases where the prosecutor and witnesses are in attendance, the Justice before whom the accused appears or is brought, although the crime of which he is accused may have

been committed in another Territorial Division wherein the Justice has no jurisdiction, can proceed with the investigation and commit or bail the accused in the same way as if the offence had been committed in the Territorial Division in which he has jurisdiction; save that the committal must be to the Common Goal for the Territorial Division within which the offence was committed, and the bail be to appear before a Court having jurisdiction over such last mentioned Division. (*vide* s. 24.) The Justice before whom the accused should have appeared may also issue his warrant for his apprehension as if no previous hearing of the case had taken place. (*ante* s. 1.)

And if evidence be not deemed sufficient, it may be transmitted to the proper division, &c.

Where he may be committed for trial or be bailed.

47. If the testimony and evidence be not, in the opinion of the Justice or Justices, sufficient to put the accused party upon his trial for the offence with which he is charged, then the Justice or Justices shall, by recognizance, bind over the witness or witnesses whom he has examined to give evidence as hereinbefore mentioned; and such Justice or Justices shall, by Warrant (R 1), order the accused party to be taken before some Justice or Justices of the Peace in and for the Territorial Division where the offence is alleged to have been committed, and shall at the same time deliver up the information and complaint, and also the depositions and recognizances so taken by him or them to the Constable who has the execution of the last mentioned Warrant, to be by him delivered to the Justice or Justices

before whom he takes the accused, in obedience to the Warrant, and the depositions and recognizances shall be deemed to be taken in the case, and shall be treated to all intents and purposes as if they had been taken by or before the last mentioned Justice or Justices, and shall, together with the depositions and recognizances taken by the last mentioned Justice or Justices in the matter of the charge against the accused party, be transmitted to the Clerk of the Court or other proper Officer where the accused party ought to be tried, in the manner and at the time hereinbefore mentioned, if the accused party should be committed for trial upon the charge, or be admitted to bail.

If the testimony and evidence be not sufficient to put the accused party upon his trial, the Justice cannot discharge him but must order him to be taken before some Justice or Justices in and for the Territorial Division within which the offence is alleged to have been committed, sending all the papers and depositions forming the case before him, by the Constable in charge of the Warrant, to be delivered to the Justice or Justices in such other Territorial Division before whom the accused may be brought.

On the prisoner being brought before a Justice of the Territorial Division within which the offence is alleged to have been committed, such Justice must regard all such papers and depositions as having been taken and produced before him.

Expenses of constable conveying the accused to be repaid him.

48. In case such accused party be taken before the Justice or Justices last aforesaid, by virtue of

said last mentioned Warrant, the Constable or ether person or persons to whom the said Warrant is directed, and who has conveyed such accused party before such last mentioned Justice or Justices, shall upon producing the said accused party before such Justice or Justices and delivering him into the custody of such person as the said Justice or Justices direct or name in that behalf, be entitled to be paid his costs and expenses of conveying the said accused party before the said Justice or Justices.

Justice to furnish constable with a receipt or certificate, &c.

49. Upon the Constable delivering to the Justice or Justices the Warrant, information (if any), depositions and recognizances, and proving on oath or affirmation the hand-writing of the Justice or Justices who has subscribed the same, such Justice or Justices before whom the accused party is produced, shall thereupon furnish such Constable with a Receipt or Certificate (R 2), of his or their having received from him the body of the accused party, together with the Warrant, information (if any), depositions and recognizances, and of his having proved to him or them, upon oath, or affirmation the hand-writing of the Justice who issued the Warrant.

Constable to be paid by proper officer.

50. The said Constable, on producing such receipt or certificate to the proper Officer for paying

such charges, shall be entitled to be paid all his reasonable charges, costs and expenses of conveying such accused party into such other Territorial Division, and of returning from the same.

Recognizances in certain cases.

51. If such Justice or Justices do not commit the accused party for trial, or hold him to bail, then the recognizances taken before the first mentioned Justice or Justices shall be void.

Vide s. 47.

Power to any two Justices to bail persons charged with felony, not capital, &c.

In case of misdemeanor, one Justice may bail.

Justification of bail.

52. When any person appears before any Justice of the Peace charged with a felony, or suspicion of felony, other than treason or felony punishable with death, or felony under the Act for the better protection of the Crown and of the Government, and the evidence adduced is in the opinion of such Justice, sufficient to put such accused party on his trial, but does not furnish such a strong presumption of guilt as to warrant his committal for trial, the Justice, jointly with some other Justice of the Peace, may admit such person to bail upon his procuring and producing such surety or sureties as in the opinion of the two Justices will be sufficient to ensure the appearance of the person charged, at the time and place when and where he ought to be tried for the offence; and

thereupon the two Justices shall take the Recognizances (S 1, 2,) of the accused person and his sureties, conditioned for his appearance at the time and place of trial, and that he will then surrender and take his trial and not depart the Court without leave; and when the offence committed or suspected to have been committed is a misdemeanor, any one Justice before whom the accused party appears may admit to bail in manner aforesaid; —And such Justice may in his discretion require such bail to justify upon oath as to their sufficiency, which oath the said Justice may administer, and in default of such person procuring sufficient bail, then such Justice may commit him to prison, there to be kept until delivered according to law. (*Vide ante* as to proper Court for trial pp. 36-51).

Superior or County Judge in his discretion may order a party committed for trial to be admitted to bail.

53. In all cases of felony, or suspicion of felony other than treason or felony punishable with death or felony under the Act for the better protection of the Crown and of the Government, and in all cases of misdemeanor, where the party accused has been finally committed as hereinafter provided, any Judge of any Superior or County Court, having jurisdiction in the District or County, within the limits of which such accused party is confined, may, in his discretion, on application made to him for that purpose, order such accused

party or person to be admitted to bail on entering into Recognizance with sufficient sureties before two Justices of the Peace, in such amount as the Judge directs, and thereupon the Justices shall issue a warrant of deliverance (S 3,) as hereinafter provided, and shall attach thereto the order of the Judge directing the admitting of such party to bail.

Certain offences not bailable except by Judge's order.

54. No Justices of the Peace, or County Judge shall admit any person to bail accused of treason or felony punishable with death, or felony under the Act for the better protection of the Crown and of the Government, nor shall any such person be admitted to bail, except by order of a Superior Court of Criminal Jurisdiction for the Province in which the accused person stands committed, or of one of the Judges thereof, or in the Province of Quebec, by order of a Judge of the Court of Queen's Bench or Superior Court; and nothing herein contained, shall prevent such Courts or Judges admitting any person accused of misdemeanor or felony to bail when they may think it right so to do.

No Justice of the Peace can admit to bail on the close of examination any person charged before him with treason, felony punishable with death or felony under the Act for the better protection of the Crown and of the Government when in his opinion the evidence taken is sufficient to put the person accused upon his trial, A Justice of the Peace can

conjointly with another Justice of the Peace, when in their opinion the evidence given is sufficient to put the accused upon his trial, but does not furnish such a strong presumption of guilt as to warrant his committal for trial, admit him to bail in any charge of felony, save those above mentioned. A Justice can in all cases of misdemeanor admit the accused to bail. A Justice is bound in cases of misdemeanor to bail, if he refuse bail in such case he is guilty of misdemeanor, (2 Hawk. c. 15. s. 13), he may also be punished if he admit a person to bail who is not bailable; but vide *Linford vs. Fitzroy* 13, Q. B. 240, 3 N. S. C. 444, in which the taking or rejecting of bail was declared to be a judicial act.

A Judge of any Superior or County Court, possessing civil jurisdiction in the District or County within which the accused party is confined on final commitment, can order him to be admitted to bail, application being made to him for that purpose, on entering into Recognizance as directed by s. 53, in all cases save treason, felony punishable with death, or felony under the act for the better protection of the Crown and of the Government.

All Superior Courts of Criminal Jurisdiction. the individual Judges thereof and the Judges of the Superior Court in the Province of Quebec, can admit to bail in the respective Provinces in which they have jurisdiction all persons finally committed therein on charges of treason, felony and misdemeanor without any exception.

Justice bailing after committal to issue a warrant of deliverance.

55. In all cases where a Justice or Justices of the Peace admit to bail any person who is then in any prison charged with the offence for which he is so admitted to bail, the Justice or Justices shall

send to or cause to be lodged with the keeper of such Prison, a Warrant of Deliverance (S 3,) under his or their hand and seal or hands and seals, requiring the said Keeper to discharge the person so admitted to bail if he be detained for no other offence, and upon such Warrant of Deliverance being delivered to or lodged with such Keeper, he shall forthwith obey the same.

If sufficient, to be bailed or committed, &c.

Proviso :

56. When all the evidence offered upon the part of the prosecution against the accused party has been heard, if the Justice or Justices of the Peace then present are of opinion that it is not sufficient to put the accused party upon his trial for any indictable offence, such Justice or Justices shall forthwith order the accused party, if in custody, to be discharged as to the Information then under inquiry ; but if in the opinion of such Justice or Justices the evidence is sufficient to put the accused party upon his trial for an indictable offence, although it may not raise such a strong presumption of guilt as would induce them to commit the accused for trial without bail, or if the offence with which the party is accused is a misdemeanor, then the Justices shall admit the party to bail as hereinbefore provided, but if the offence be a felony, and the evidence given is such as to raise a strong presumption of guilt, then the Justice or Justices shall by his or their warrant (T 1,) commit him to

the Common Gaol for the Territorial Division to which he may by Law be committed, or in the case of an indictable offence committed on the high seas or on land beyond the sea, to the Common Gaol of the Territorial Division within which such Justice or Justices have jurisdiction, to be there safely kept until delivered by due course of law; Provided that in cases of misdemeanor the Justice or Justices who have committed the offender for trial, may, at any time before the first day of the sitting of the Court at which he is to be tried, bail such offender in manner aforesaid, or may certify on the back of the Warrant of committal the amount of bail to be required, in which case any other Justice of the Peace for the same Territorial Division may admit such person to bail in such amount, at any time before such first day of the sitting of the Court aforesaid.

It has been pretended that Justices act but ministerially in preliminary investigations into indictable offences, but it is clear that under this section they act judicially in deciding upon the propriety of discharging or committing the accused or binding him over for trial (*Linford vs. Fitzroy* 3 N. S. C. 444).

Justices ought not to balance the evidence and decide according as it preponderates, for this would in fact be taking upon themselves the functions of the petty jury and be trying the case: but they should consider whether or not the evidence makes out a strong or probable or conflicting case of guilt; in the first case they should commit, in the second and third they should admit to bail, if however from

the slender nature of the evidence, the unworthiness of the witnesses, or the conclusive proof of innocence produced on the part of the accused by way of confession and avoidance, they feel that the case is not sustained and that if they send it for trial he must be acquitted, they should discharge the accused.

The power to admit to bail under this section it must be remembered is limited by § 52. 54.

Provisions touching the conveyance of prisoners to gaol.

57. The Constable or any of the Constables, or other persons to whom any Warrant of Commitment authorized by this or any other Act or law is directed, shall convey the accused person therein named or described to the gaol or other prison mentioned in such warrant, and there deliver him together with the Warrant, to the Keeper of such gaol or prison, who shall thereupon give the Constable or other person delivering the prisoner into his custody a Receipt (T 2,) for the prisoner, setting forth the state and condition of the prisoner when delivered into his custody.

When and how defendant may be entitled to a copy of depositions.

58. At any time after all the examinations have been completed, and before the first sitting of the Court at which any person so committed to prison or admitted to bail is to be tried, such person may require and shall be entitled to have, from the Officer or person having the custody of the same, copies of the depositions on which he has been committed or bailed, on payment of a reasonable

sum for the same, not exceeding the rate of five cents for each folio of one hundred words.

The right to copies under this section does not attach until the accused is held to bail or committed to prison for trial (*Ex parte Joshua Fletcher* 13 L. J. (N. S.) M. C. 67; *Reg. vs. Lord Mayor of London* 5 Q. B. 555). Nor is he entitled to such copies when the charge against him is dismissed (*Reg. vs. Humphreys* 4 N. S. C. 79).

Certain Magistrates may act alone under this Act.

59. Any Judge of the Sessions of the Peace for the City of Quebec or for the City of Montreal, or any Police Magistrate, District Magistrate or Stipendiary Magistrate, appointed for any Territorial Division, or any Magistrate authorized by the law of the Province in which he acts, to perform acts usually required to be done by two or more Justices of the Peace, may do alone whatever is authorized by this Act to be done by any two or more Justices of the Peace, and the several forms in this Act contained may be varied so far as necessary to render them applicable to such case.

Any Judge of the Sessions for instance can admit a person accused of felony to bail under the provisions of s. 52 which require two Justices to act jointly in such matter.

Duty of Coroner, in cases of murder or manslaughter.

Recognizances to be sent to proper officer.

60. Every Coroner, upon any inquisition taken before him, whereby any person is indicted for manslaughter or murder, or as an accessory to murder before the fact, shall, in presence of the party accused, if he can be apprehended, put in

writing the evidence given to the jury before him, or as much thereof as may be material, giving the party accused full opportunity of cross-examination; and the Coroner shall have authority to bind by recognizance all such persons as know or declare anything material touching the manslaughter or murder, or the offence of being accessory to murder, to appear at the Court of Oyer and Terminer, or Gaol Delivery, or other Court or term or sitting of a Court, at which the trial is to be, then and there to prosecute or give evidence against the party charged; and every such Coroner shall certify and subscribe the evidence, and all recognizances, and also the inquisition before him taken, and shall deliver the same to the proper Officer of the Court at the time and in the manner specified in the thirty-eighth section of this Act.

Formerly it was a question whether the Coroner had not the power of excluding the public generally and even those suspected of committing the crime then under investigation, from the place where the inquest was held. (Jervis on Coroners 2 Ed. p. 266.)

The accused at that time had no right to cross examine the witnesses and he consequently could not transfer to his Attorney or Counsel a right he himself did not possess. But under this clause such right is vested in the accused if apprehended and consequently his Counsel can cross-examine the witnesses. The inquiry in fact before the Coroner in such case is placed very much upon the same footing as that before Justices into indictable offences so that the remarks upon s. 29, s. 30 may be looked upon, so far as the right of

cross-examination is concerned, as applicable to Coroner's Inquests.

When party committed wishes to be bailed, Justices on notice thereof to forward all information to Clerk of the Crown, or other proper officers.

61. When any person has been committed for trial by any Justice or Justices, or Coroner, the Prisoner, his Counsel, Attorney or Agent, may notify the committing Justice or Justices, or Coroner, that he will so soon as counsel can be heard, move one of Her Majesty's Courts of Superior Criminal jurisdiction for the Province in which such person stands committed, or one of the Judges thereof, or in the Province of Quebec, a Judge of the Court of Queen's Bench, or of the Superior Court, or in the Provinces of Ontario or New Brunswick, the Judge of the County Court if it is intended to apply to such Judge under the fifty-third section of this Act, for an order to the Justices of the Peace, or Coroner for the Territorial Division where such Prisoner is confined, to admit such Prisoner to bail, whereupon such committing Justice or Justices, or Coroner, shall, with all convenient expedition, transmit to the office of the Clerk of the Crown, or the Chief Clerk of the Court, or the Clerk of the County Court or other proper officer (as the case may be,) close under the hand and seal of one of them, a certified copy of all informations, examinations, and other evidences, touching the offence wherewith the Pri-

soner has been charged, together with a copy of the warrant of commitment and inquest, if any such there be, and the packet containing the same shall be handed to the person applying therefor, in order to its transmisssion, and it shall be certified on the outside thereof to contain the information touching the case in question.

Same order to be made as upon Habeas Corpus.

62. Upon such application to any such Court or Judge as in the last preceding section mentioned, the same order touching the prisoner being bailed or continued in custody, shall be made as if the party were brought up upon a *Habeas Corpus*.

Penalty on Justices and Coroners disobeying this Act.

63. If any Justice or Coroner neglects or offends in any thing contrary to the true intent and meaning of any of the provisions of the sixtieth and following sections of this Act, the Court to whose Officer any such examination, information, evidence, bailment, recognizance, or inquisition ought to have been delivered, shall, upon examination and proof of the offence, in a summary manner, set such fine upon every such Justice or Coroner as the Court thinks meet.

Provisions to apply to all Justices and Coroners.

64. The provisions of this Act relating to Justices and Coroners, shall apply to the Justices and Coroners not only of Districts and Counties at large, but also of all other Territorial Divisions and Jurisdictions.

Interpretation.

65. The words "Territorial Division," whenever used in this Act shall mean County, Union of Counties, City, Town, Parish or other Juridical Division or place to which the context may apply.

Forms.

66. The several forms in the Schedule to this Act contained, or forms to the like effect, shall be good, valid and sufficient in law.

This section has only the effect of legalizing the particular forms contained in the Schedule to the Act. The justices may if they think fit adopt any other forms, but so long as the form given in the Schedule is applicable to the case, it would be in the highest degree unwise to depart from it.

Commencement of Act.

67. This Act shall commence and take effect on the first day of January, in the year of our Lord, one thousand eight hundred and seventy.

SCHEDULES.

REFERRED TO IN PRECEDING ACT.

(A) *Vide ss, 1 and 9.*

(1) INFORMATION AND COMPLAINT FOR AN INDICTABLE OFFENCE.

Canada,
Province of
District (or County,
United Counties, or
as the case may be,)
of

The information and complaint of C. D. of
(*yeoman*), taken day of , in the
year of our Lord , before the undersigned,
(*one*) of Her Majesty's Justices of the Peace, in and for the said
District (or County, or as the case may be,) of (a) who saith that
(b) * (*&c., stating the offence.*)

Sworn (or affirmed) before (*me*) the day and year first above
mentioned, at

J. S.

(a) If a Judge of Sessions, Police Magistrate or Stipendiary
Magistrate proper title to be given.

(b) If the offender is merely suspected to have committed the
offence, and the informant did not see him commit it, insert here :
"he hath just cause to believe and suspect, and doth believe and
suspect, that" then insert the name of the offender,
address, &c., if known, or if unknown, his description as in the
note (c) post, which is allowable by s. 17, and then set out the
offence.

If the offence be committed *out of* the jurisdiction of the justice
receiving the information, but the offender be residing within it,
add, after the description of the offence: "And that the said
A. B. is now residing or being (*or is supposed and suspected to*
be residing or to be) at the parish of , in the said
(*county*), and within my jurisdiction."

(2) INFORMATION AGAINST AN ACCESSORY AFTER THE FACT TO A FELONY WITH THE PRINCIPAL (not in Statute, Okes For. p. 487. No. 2.)

*Proceed as in No. 1 supra, and after describing the offence of the principal, state thus:—*and that E. L. of &c., well knowing the said A. B. to have committed the felony aforesaid, afterwards, to wit, on the _____ day of _____ instant, at the Parish of _____ aforesaid, feloniously did receive, harbor and maintain the said A. B.

(3) THE LIKE WITHOUT THE PRINCIPAL OR WHERE PRINCIPAL UNKNOWN. (not in Statute, Okes For. p. 487. No. 3.)

Proceed as in No. 1 supra, to the asterisk, then thus:—*that one A. B. of &c., (or some person or persons whose name or names is or are unknown), on the _____ day of _____, at the Parish of _____, &c., feloniously did (*describe the offence of the principal*):—And that E. F. of &c., well knowing the said A. B., (or person unknown) to have committed the felony aforesaid, afterwards to wit, on the _____ day of _____ at the Parish of _____ aforesaid, feloniously did receive, harbor and maintain the said A. B. (or person unknown.)

(4) DYING DECLARATION BEFORE A JUSTICE IN CASE OF PERSONAL INJURIES TO THE DECLARANT (not in Statute, Okes For. p. 487. No. 5.)

No particular form of this declaration is necessary; but it may be as well to state in this place that its principal ingredients, in order to its admissibility in evidence against a prisoner, are:—

1. The cause of the death of the declarant must be the subject of the inquiry.
2. The circumstances of the death the subject of the declaration.
3. It must appear to have been made at a time when the declarant (the deceased) was perfectly aware of his danger and entertained no hope of recovery.

If the accused can be brought into the presence of the person injured, the examination should be taken in the usual form; but

if otherwise, the declaration, *not on oath*, should be taken by a Justice in somewhat like the following form :—

" I, C. D. of _____ in the (county) of _____ do hereby solemnly and sincerely declare that (*here set out the statement in the very words used.*)

Taken before me, at _____ in the (county) of _____, this _____ day of _____, 1868.

J. S.

One of Her Majesty's Justices
of the Peace for the said
(county) of _____

(B) See ss. 1, 17.

(5) WARRANT TO APPREHEND A PERSON CHARGED WITH
AN OFFENCE.

Canada,
Province of _____,
District (or County,
United Counties, or
as the case may be,)
of _____

To all or any of the Constables or other Peace Officers in the District (or County, United Counties, or as the case may be,) of _____ : Whereas A. B., of _____ (laborer,) (c) hath this day _____, been charged upon oath before the undersigned, (one) of Her Majesty's Justices of the Peace in and for the said District (or County, United Counties, or as the case may be,) of _____, for that he, on _____,

(c) If the offender's name is unknown s. 17 allows his description to be given in a warrant, which may be as follows :—

Whereas a certain man (*an Italian, or as the case may be, if a foreigner, whose name is not known, but the description of whose person is stated in the margin hereof, hath this day, &c.* (Proceed as in the usual form : but wherever the name of the defendant occurs, say, "*the said man unknown.*")

Description.	
Height.....	
Colour of Hair.....	
Colour of Eyes.....	
Age, apparently.....	
Complexion.....	
Distinctive marks....	
Dress.....	

at _____, did (*&c.*, *stating shortly the offence*). (d) These are therefore to command you, in Her Majesty's name, forthwith to apprehend the said A. B., and to bring him before (*me*) or some other of Her Majesty's Justices of the Peace in and for the said District (*or County, United Counties, or as the case may be,*) of _____, to answer unto the said charge, and to be further dealt with according to law.

Given under (*my*) Hand and Seal, this _____ day of _____, at _____, in the District (*County, &c.*, aforesaid.
J. S. [L. S.]

(C) See ss. 2, 13.

(6) SUMMONS TO A PERSON CHARGED WITH AN INDICTABLE OFFENCE.

Canada,
Province of _____,
District (*or County,*
United Counties, *or*
as the case may be,)
of _____

To A. B. of _____, (*laborer* :)

Whereas you have this day been charged before the undersigned (*one*) of Her Majesty's Justices of the Peace in and for the said District (*or County, United Counties, or as the case may be,*) of _____ for that you on _____ at _____,

(*&c.*, *stating shortly the offence*;) (e) These are therefore to command you, in Her Majesty's name, to be and appear before (*me*) on _____ at _____ o'clock in the (*fore*) noon, at _____, or before such other Justice or Justices of the Peace of the same District (*or County, United Counties, or as the case may be,*) of _____, as may then be there, to answer to the said charge, and to be further dealt with according to law. Herein fail not.

Given under (*my*) Hand and Seal, this _____ day of _____ in the year of our Lord _____, at _____, in this District (*or County, &c.*,) aforesaid.

J. S. [L. S.]

(d) If the offence were committed out of the Justice's Jurisdiction, but the offender be within it, add here the words as directed in note (b), ante.

(e) The offence or matter of complaint may be stated much shorter in the summons than in a warrant, or in the conviction.

(7) DEPOSITION OF THE CONSTABLE OF THE SERVICE OF THE SUMMONS. (Not in Statute, Oakes For. No. 9. p. 11).

Canada,
Province of
District (or County,
United Counties, or
as the case may be,)
of

The deposition of J. N. constable of the Parish of C., in the said (county,) taken upon oath before me the undersigned, one of Her Majesty's Justices of the Peace for the said (county) of C., at N., in the same (county), this day of 18 , who saith that he served A. B., mentioned in the annexed (or within) summons, with a duplicate thereof, on the day of last personally (or "by leaving the same with N. O. a grown person at the said A. B.'s usual or last place of abode at N., in the county S.")

Before me J. S.

J. N.

(D) See ss. 2, 16.

(8) WARRANT WHEN THE SUMMONS IS DISOBEYED.

Canada,
Province of
District (or County,
United Counties, or
as the case may be,)
of

To all or any of the Constables, or other Peace Officers in the said District (or County, United Counties, or as the case may be,) of :

Whereas on the day of (instant or last past) A. B. of the , was charged before (me or us,) the undersigned, or name the Magistrate or Magistrates, or as the case may be (one) of Her Majesty's Justices of the Peace in and for the said District (or County, United Counties, as the case may be,) of for that (&c., as in the Summons;) And whereas (I, or he, the said Justice of the Peace, or we or they, the said Justices

of the Peace) did then issue (*my, our, his, or their*) Summons to the said A. B., commanding him, in Her Majesty's name, to be and appear before (*me*) on _____, at _____, o'clock in the (*fore*) noon, at _____, or before such other Justice or other Justices of the Peace as should then be there, to answer to the said charge, and to be further dealt with according to law; And whereas the said A. B., hath neglected to be or appear at the time and place appointed in and by the said Summons, although it hath now been proved to (*me*) upon oath, that the said Summons was duly served upon the said A. B.; These are therefore to command you in Her Majesty's name, forthwith to apprehend the said A. B., and to bring him before (*me*) or some other of Her Majesty's Justices of the Peace in and for the said District (*or County, United Counties, or as the case may be*), of _____, to answer the said charge, and to be further dealt with according to law.

Given under (*my*) Hand and Seal, this _____ day
of _____, in the year of our Lord _____, in the
District (*or County, &c.*) of _____ aforesaid.

J. S. [L. s.]

(D 2) See s. 3.

(9) WARRANT TO APPREHEND A PERSON CHARGED WITH
AN INDICTABLE OFFENCE COMMITTED ON THE HIGH
SEAS OR ABROAD.

For offences committed on the high seas the warrant may be the same as in ordinary cases, but describing the offence to have been committed "on the high seas, out of the body of any District or County of Canada and within the jurisdiction of the Admiralty of England."

For offences committed abroad, for which the parties may be indicted in Canada, the warrant also may be the same as in ordinary cases, but describing the offence to have been committed "on land out of Canada, to wit: at _____, in the Kingdom of _____, or at _____, in the Island of _____, in the West Indies, or at _____, in the East Indies," or as the case may be.

(E 1) See s. 12.

(10) INFORMATION TO OBTAIN A SEARCH WARRANT.

Canada,
Province of
District (or County,
United Counties, or
as the case may be.)
of

The information of A. B., of the _____, of _____,
in the said District (or County, &c.) (yeoman), taken this
_____ day of _____, in the year of Our Lord
_____, before me, W. S., Esquire, one of Her Majesty's
Justices of the Peace, in and for the District (or County, United
Counties, or as the case may be.) of _____, who saith that
on the _____ day of _____ (insert the description of
articles stolen) of the goods and chattels of Deponent, were
feloniously stolen, taken and carried away, from and out of the
(Dwelling House, &c.) of this Deponent, at the (Township, &c.)
aforesaid, by (some person or persons unknown, or name the
person,) and that he hath just and reasonable cause to suspect,
and doth suspect that the said goods and chattels, or some part
of them, are concealed in the (Dwelling House, &c., of C. D.)
of _____, in the said District, (or County,) here add the
causes of suspicion, whatever they may be;) Wherefore, (he) prays
that a Search Warrant may be granted to him to search (the
Dwelling Houses, &c.) of the said C. D. as aforesaid, for the said
goods and chattels so feloniously stolen, taken and carried away
as aforesaid.

Sworn (or affirmed) before me the day and year first above
mentioned, at _____ in the said District, (or County)
of _____

W. S.

J. P.

(E 2) *See s. 12.*

(11)

SEARCH WARRANT.

Canada, }
 Province of }
 District (or County, }
 United Counties, or }
as the case may be, }
 of }

To all or any of the Constables, or other Peace Officers, in the District (or County, United Counties, or *as the case may be,*) of

Whereas A. B. of the , of , in the said District, (or County, &c.,) hath this day made oath before me the undersigned, one of Her Majesty's Justices of the Peace, in and for the said District, (or County, United Counties, or *as the case may be,*) of , that on the day of , copy information as far as place of supposed concealment;) These are therefore in the name of our Sovereign Lady the Queen, to authorise and require you, and each and every of you, with necessary and proper assistance, to enter in the day time into the said (*Dwelling House, &c.,*) of the said &c., and there diligently search for the said goods and chattels, and if the same, or any part thereof, shall be found upon such search, that you bring the goods so found, and also the body of the said C. D. before me, or some other Justice of the Peace, in and for the said District (or County, United Counties, or *as the case may be,*) of , to be disposed of and dealt with according to Law.

Given under my Hand and Seal, at in the said District (or County, &c.,) this day of , in the year of our Lord, one thousand eight hundred and

W. S., J. P. (*Seal.*)

(F) *See s. 4.*

(12) CERTIFICATE OF INDICTMENT BEING FOUND.

I hereby certify that at a Court of (Oyer and Terminer, or General Gaol Delivery, or General Sessions of the Peace) holden

in and for the District (or County, United Counties, or as the case may be,) of _____, at _____ in the said District, (County, &c.,) on _____, a Bill of Indictment was found by the Grand Jury against A. B., therein described as A. B., late of _____ (laborer) for that he (&c., stating shortly the offence,) and that the said A. B. hath not appeared or pleaded to the said Indictment.

Dated this _____, day of _____, one thousand eight hundred and _____

Clerk of the Crown, or Deputy Clerk of the Crown for the District (or County, United Counties, or as the case may be),

or
Clerk of the Peace of and for the said District (or County, United Counties, or as the case may be.)

(13) WARRANT TO APPREHEND A PERSON INDICTED.

Canada,
Province of _____,
District (or County, United Counties, or as the case may be, of _____)

To all or any of the Constables, or other Peace Officers in the said District (or County, United Counties, or as the case may be) of _____

Whereas it hath been duly certified by J. D., Clerk of the Crown of (name the Court) (or E. G., Deputy Clerk of the Crown, or Clerk of the Peace, as the case may be) in and for the District (or County, United Counties, or as the case may be) of _____ that (&c., stating the certificate;) These are therefore to command you in Her Majesty's name forthwith to apprehend the said A. B., and to bring him before (me) or some other Justice or Justices of the Peace in and for the said District (or County, United Counties or as the case may be,) to be dealt with according to Law.

Given under my Hand and Seal, this _____ day of _____, in the year of Our Lord _____, at _____ in the District (or County, &c.,) aforesaid.

J. S. [L. S.]

(14) DEPOSITION THAT THE PERSON APPREHENDED IS
THE SAME WHO IS INDICTED. (Not in Statute, Okes
For. p. 491. No. 16.)

Canada,
Province of
District (or County,
United Counties, or
as the case may be,)
of

The deposition of J. N. of the Parish of , in
the (County) of , constable taken upon oath before
me, the undersigned, one of Her Majesty's Justices of the Peace
for the said (County) of , in the same (County,)
this day of , A. D. 18 :

Who saith, I well know A. B., of &c., described in the
certificate of J. D., Clerk of the Crown of
(or Clerk of the Peace of (as the case may be)
now produced by me; that I never heard mention of any other
person of the same name as the said A. B., living at or near the
parish of* (or as the case may be;) that A. B. apprehended (by me)
and now here present, is the same person who is charged in the
indictment referred to in the said certificate.

Taken and sworn before me, the
day and year and at the place above } J. N.
mentioned.

J. S.

(H) See s. 5.

(15) WARRANT OF COMMITMENT OF A PERSON INDICTED.

Canada,
Province of
District (or County,
United Counties, or
as the case may be,)
of

To all or any of the Constables, or other Peace Officers in the
said District (or County, &c.) of and the Keeper
of the Common Gaol, at , in the said District
(or County, United Counties, or as the case may be) of
Whereas by a Warrant under the Hand and Seal of

(one) of Her Majesty's Justices of the Peace in and for the said District (or County, United Counties, or as the case may be) of under Hand and Seal dated , after reciting that it had been certified by J. D. (*&c.*, as in the certificate,) () the said Justice of the Peace commanded all or any of the Constables, in Her Majesty's name, forthwith to apprehend the said A. B. and to bring him before (*him*) the said Justice of the Peace in and for the said District (or County, United Counties, or as the case may be) of or before some other Justice or Justices in and for the said District (or County, United Counties, or as the case may be,) to be dealt with according to law; And whereas the said A. B. hath been apprehended under and by virtue of the said Warrant, and being now brought before (*me*) it is hereupon duly proved to (*me*) upon oath that the said A. B. is the same person who is named and charged by , in the said indictment; These are to command you the said Constables and Peace Officers, or any of you, in Her Majesty's name, forthwith to take and convey the said A. B. to the said Common Gaol at , in the said District (or County, United Counties, or as the case may be, of , and there to deliver him to the Keeper thereof, together with the Precept; and (*I*) hereby command you the said Keeper to receive the said A. B. into your custody in the said Gaol, and him there safely to keep until he shall thence be delivered by due course of law.

Given under (*my*) Hand and Seal, this day of in the year of our Lord , at in the District (or County, *&c.*,) aforesaid.

J. S. [L. S.].

(16) DEPOSITION THAT THE PERSON INDICTED IS THE SAME WHO IS IN CUSTODY FOR SOME OTHER OFFENCE.
(Not in Statute, Okes For. p. 492. No. 18.)

(Proceed as in the form No. 14 to the asterisk *, then thus:—that A. B. now confined in the (*common gaol*) at in the (*county*) of , is the same person who is indicted and referred to in the said certificate.

(I) *See s. 6.*(17) WARRANT TO DETAIN A PERSON INDICTED WHO IS
ALREADY IN CUSTODY FOR ANOTHER OFFENCE.

Canada,
Province of
District (or County,
United Counties, or
as the case may be),
of

To the Keeper of the Common Goal at in the said
District (or County, United Counties, or as the case may be),
of

Whereas it hath been duly certified by J. D., Clerk of the Crown
of (*name the Court*) or Deputy Clerk of the Crown, or Clerk of the
Peace of and for the District (or County, United Counties, or as
the case may be,) of that (*&c., stating the Certificate ;*)

And whereas (*I am*) informed that the said A. B. is in your custody
in the said Common Goal at aforesaid, charged
with some offence, or other matter; and it being now duly proved
upon oath before (*me*) that the said A. B. so indicted as aforesaid,
and the said A. B., in your custody as aforesaid, are one and the
same person; These are therefore to command you, in Her
Majesty's name, to detain the said A. B., in your custody in the
Common Goal aforesaid, until by Her Majesty's Writ of *Habeas*
Corpus he shall be removed therefrom for the purpose of being
tried upon the said indictment, or until he shall otherwise be
removed or discharged out of your custody by due course of law.

Given under (*my*) Hand and Seal, this day
of , in the year of our Lord at
in the District (or County, &c.,) aforesaid.

J. S. [L. s.]

(K) *See s. 23.*

(18) ENDORSEMENT IN BACKING A WARRANT.

Canada,
Province of
District (or County,
United Counties, or
as the case may be),
of

Whereas proof upon oath hath this day been made before me,

one of Her Majesty's Justices of the Peace in and for the said District (or County, United Counties, or as the case may be,) of that the name of J. S., to the within Warrant subscribed, is of the handwriting of the Justice of the Peace within mentioned; I do therefore hereby authorise W. T. who bringeth to me this Warrant and all other persons to whom this warrant was originally directed, or by whom it may be lawfully executed, and also all Constables and other Peace Officers of the said District (or County, United Counties, or as the case may be) of , to execute the same within the said last mentioned District (or County, United Counties, or as the case may be.)

Given under my Hand, this day of ,
in the year of our Lord , at , in the
District (or County, &c.,) aforesaid.

J. L.

(19) DEPOSITION THAT A PERSON IS A MATERIAL WITNESS.
(Not in Statute, Okes For. p. 14. No. 19.)

Canada, }
Province of , }
District (or County, , }
United Counties, or , }
as the case may be), }
of }

The deposition of J. N., of the parish of C., in the said County (farmer), taken on oath before me the undersigned, one of Her Majesty's Justices of the Peace in and for the said County of C., at N., in the said County, this day of , 18 , who saith that E. F. of the parish of C., aforesaid (grocer) is likely to give material evidence on behalf of the prosecution, in this behalf, touching the matter of the annexed (or "within") information (or "complaint"); And that this deponent verily believes that the said E. F. will not appear voluntarily for the purpose of being examined as a witness (or if a warrant be granted in the first instance, "without being compelled so to do.")

Before me, J. S.

J. N.

(L 1) See s. 25.

(20) SUMMONS TO A WITNESS.

Canada,
Province of
District (or County,
United Counties, or
as the case may be),
of

To E. F. of

, (laborer):

Whereas information hath been laid before the undersigned, one of Her Majesty's Justices of the Peace in and for the said District (or County, United Counties, or as the case may be,) of , that A. B. (&c., as in the Summons or Warrant against the accused,) and it hath been made to appear to me upon (oath,) that you are likely to give material evidence for (prosecution); These are therefore to require you to be and appear before me on next, at o'clock in the (fore) noon at , or before such other Justice or Justices of the Peace of the same District (or County, United Counties, or as the case may be) of as may then be there to testify what you shall know concerning the said charge so made against the said A. B. as aforesaid. Herein fail not.

Given under my Hand and Seal, this day of
in the year of our Lord , at
in the District (or County, &c.,) aforesaid.

J. S. [L. S.]

(L 2) See s. 26.

(21) WARRANT WHEN A WITNESS HAS NOT OBEYED THE SUMMONS.

Canada,
Province of
District (or County,
United Counties, or
as the case may be),
of

To all or any of the Constables or other Peace Officers, in the said District (or County, United Counties, or as the case may be of

Whereas information having been laid before *(one)* of Her Majesty's Justices of the Peace, in and for the District *(or County, &c.,)* of _____, that A. B., *(&c., as in the Summons;)* And it having been made to appear to *(me)* upon oath that E. F. of _____, *(laborer,)* was likely to give material evidence for the prosecution, *(I)* did duly issue *(my)* summons to the said E. F., requiring him to be and appear before *(me)* on _____ at _____, or before such other Justice or Justices of the Peace for the same District *(or County, United Counties or as the case may be,)* as might then be there, to testify what he should know respecting the said charge so made against the said A. B. as aforesaid; And whereas proof has this day been made upon oath before *(me)* of such summons having been duly served upon the said E. F.; and whereas the said E. F. hath neglected to appear at the time and place appointed by the said Summons, and no just excuse has been offered for such neglect; These are therefore to command you to bring and have the said E. F. before *(me)* on _____ at _____ o'clock in the *(fore)* noon, at _____, or before such other Justice or Justices for the same District *(or County, United Counties, or as the case may be,)* as may then be there, to testify what he shall know concerning the said charge so made against the said A. B. as aforesaid.

Given under *(my)* Hand and Seal, this _____ day of _____ in the year of Our Lord _____, at _____ in the District *(or County, &c.,)* aforesaid.

J. S. [L. S.]

(L 3) See s. 27.

(22) WARRANT FOR A WITNESS IN THE FIRST INSTANCE.

Canada,
Province of _____,
District *(or County, United Counties, or as the case may be,)*
of _____

To all or any of the Constables, or other Peace Officers in the said District *(or County, United Counties, or as the case may be)* of _____:

Whereas information has been laid before the undersigned, *(one)* of Her Majesty's Justices of the Peace, in and for the said District *(or County, United Counties, or as the case may be,)* of _____ that &c., *as in the summons;* (and it having been

made to appear to *me*) upon oath, that E. F. of
 (*laborer*), is likely to give material evidence for the prosecution,
 and that it is probable that the said E. F. will not attend to give
 evidence unless compelled to do so. These are therefore to
 command you to bring and have the said E. F. before (*me*)
 on at o'clock in the (*fore*) noon,
 at , or before such other Justice or Justices of the
 Peace for the same District (*or County, United Counties, or as*
the case may be), as may then be there, to testify what he shall
 know concerning the said charge so made against the said A. B.
 as aforesaid.

Given under my Hand and Seal, this day of
 in the year of Our Lord , at in
 the District (*or County, &c.*) aforesaid

J. S. [L. S.]

(L 4) See s. 28

(23) WARRANT OF COMMITMENT OF A WITNESS FOR
 REFUSING TO BE SWORN, OR TO GIVE EVIDENCE.

Canada,
 Province of ,
 District (*or County,*
United Counties, or
as the case may be),
 of

To all or any of the Constables, or other Peace Officers, in the
 District (*or County, United Counties, or as the case may be*)
 of , and to the keeper of the Common Gaol
 at , in the said District (*or County, United*
Counties, or as the case may be) of

Whereas A. B. was lately charged before (one) of
 Her Majesty's Justices of the Peace in and for the said District
 (*or County, United Counties, or as the case may be*) of
 for that (*&c., as in the Summons*); And it having been made to
 appear to (*me*) upon oath that E. F. of was likely
 to give material evidence for the prosecution, (*I*) duly issued
 (*my*) Summons to the said E. F. requiring him to be and appear
 before me on , at , or before such
 other Justices of the Peace for the same District (*or County,*
United Counties, or as the case may be), as should then be there, to

testify what he should know concerning the said charge so made against the said A. B. as aforesaid; And the said E. F. now appearing before *(me)* *(or being brought before (me) by virtue of a Warrant in that behalf, to testify as aforesaid,)* and being required to make oath or affirmation as a witness in that behalf, hath now refused so to do, *(or being duly sworn as a witness doth now refuse to answer certain questions concerning the premises which are now here put to him, and more particularly the following)*

without offering any just excuse for such refusal; These are therefore to command you, the said Constables, Peace Officers, or any of you, to take the said E. F. and him safely convey to the Common Gaol at

in the District *(or County, &c.)* aforesaid, and there to deliver him to the Keeper thereof, together with this Precept; And *(I)* do hereby command you, the said Keeper of the said Common Gaol to receive the said E. F. into your custody in the said Common Gaol, and him there safely keep for the space of days, for his said contempt, unless he shall in the meantime consent to be examined, and to answer concerning the premises; and for your so doing, this shall be your sufficient Warrant.

Given under *(my)* Hand and Seal, this day of
in the year of Our Lord , at , in the
District *(County, &c.,)* aforesaid.

J. S. [L. S.]

(24) WARRANT OF COMMITMENT OF A WITNESS FOR
REFUSING TO BE SWORN OR TO GIVE EVIDENCE WHO
ATTENDS WITHOUT A SUMMONS. (Not in Statute,
Okes For. p. 400. No. 41.)

Canada, }
Province of }
District *(or County,* }
United Counties, *or* }
as the case may be,) }
of }

To all or any of the Constables, or other Peace officers, in the
District *(or County, United Counties, or as the case may be,)*
of and to the Keeper of the Common Gaol
at , in the said District *(or County, United*
Counties, or as the case may be) of :

Whereas A. B. was this day brought before me, the undersigned,
(one) of Her Majesty's Justices of the Peace in and for the said
(County) of , for that he the said A. B. on &c., at

&c., (here state the charge as in the Summons, warrant or caption of the depositions) And whereas one E. F. of &c., here in the presence of the said A. B. now under examination before me the said Justice on the charge aforesaid, now voluntarily appears as a witness for the prosecution in that behalf, and the said E. F. appearing to me, upon oath, likely to give material evidence for the prosecution, but being required to make oath or affirmation as a witness in that behalf, hath now refused so to do, (or being duly sworn as a witness, doth now refuse to answer certain questions concerning the premises, which are here put to him,) without offering any just cause for such his refusal: These are therefore to command you the said constable to take the said E. F. and him safely to convey to the (Common Goal) at _____, in the (County) aforesaid and there deliver him to the said Keeper thereof, with this precept, and I do hereby command you the said Keeper of the said (Common Goal) to receive the said E. F. into your custody in the said (Common Goal), and him there safely keep,* (f) for the space of _____ days for his said contempt, unless he shall in the meantime consent to be examined and to answer concerning the premises; and for your so doing this shall be your sufficient warrant.

Given under my Hand and Seal, this _____ day
of _____, in the year of our Lord _____, at _____
in the (County) aforesaid.

J. S. [L. S.]

(M) See s. 29.

(25) DEPOSITION OF WITNESSES. (g) Okes For. Note (g)
p. 501.

Canada,
Province of _____ }
District (or County),
United Counties, or
as the case may be, }
of _____ }

The examination of C. W. of _____, (farmer), and
E. F. of _____, (laborer), taken on (oath) this
day of _____, in the year of our Lord _____,
at _____, in the District (or County, &c., or as the case

(f) The period of imprisonment cannot be greater than ten days.

(g) It is recommended that the caption and depositions be written on foolscap paper, the caption on a half sheet, and each

may be,) aforesaid before the undersigned, (one) of Her Majesty's Justices of the Peace for the said District (or County, United Counties, or as the case may be,) in the presence and hearing of A. B. who is charged this day before (me) for that he, the said A. B.

at _____, " (&c., describe the Offence as in the Warrant of Commitment.) (h)

This Deponent, C. D., upon his (oath) saith as follows: (&c., stating the depositions of the witness as nearly as possible in the words he uses. When his deposition is completed, let him sign it.) (i)

And this deponent, E. F. upon his (oath) saith as follows: (&c.)

The above depositions of C. D. and E. F. were taken and (sworn) before me, at _____, on the day and year first above mentioned.

J. S.

witness commencing with a fresh sheet, written on one side only and instead of the witness's address being in the caption, inserting it at the commencement of his statement, as, "I am a farmer residing at _____, or, I carry on business at _____ as a _____ and have one partner, or as _____ &c." or as the case may be.

(h) Where the accused is charged with the commission of two or more felonies or misdemeanors committed within the same jurisdiction in respect of the same or different prosecutors, the offences may, if convenient, be included in one set of depositions (See Oke's "Synopsis," 10th ed.) the second offence being stated as,—2. And also for that he the said A. B. on &c., at &c., (stating the offence):—3. And also for that &c. (placing each offence in a separate paragraph with a number.)

(i) Where the accused interposes an observation during the examination of a witness, insert it in this manner: The prisoner here voluntarily says (*put his very words,*) or "the prisoner at this stage of the proceedings said he desired to make a statement, and having been given clearly to understand that he was not obliged to say anything now but whatever he did say would be taken down in writing and might be used in evidence against him, voluntarily saith as follows: " _____ " or the prisoner being asked whether he wished to put any question to the witness voluntarily says: " _____ " The cross-examination should likewise be taken down as "Cross-examined by the prisoner (or by Mr. Wontner, attorney, or Mr. Giffard, counsel for the prisoner?). And when the accused himself cross-examines the witness, the answer as well as the question may be taken down if desirable. The re-examination by the prosecutor's attorney, or by the magistrate, should also be distinguished, as,— "Re-examined by Mr. Humphreys, attorney for the prosecution," or "by the magistrate."

(26) DEPOSITIONS OF THE WITNESSES ON THE REMAND DAY. (Not in Statute.)

*This will be on the like caption as No. 25, but instead of repeating the offence say from the asterisk * : with the felony (or misdemeanor) before mentioned."*

*The jurat will be as follows:—*The above depositions of F. G., &c., were taken and sworn before me at _____, on the day of _____ 18____, the depositions of C. D., and E. F., taken on the _____ day of _____ 18____, (and the depositions of C. H. and L. M. taken on the _____ day of _____ 18____,) being at the same time severally read over and resworn in the presence and hearing of the before-named prisoner.

J. S.

Where the same justice hears the further evidence on the remand day, there would be no necessity for the former depositions to be re-sworn, and consequently no allusion to it in the jurat.

If on the remand day there is a committal for trial by another justice without any additional evidence, place the following jurat: "The foregoing depositions of C. D. and E. F. taken on &c. (and the depositions of F. G., &c., taken on &c.,) were severally read over and re-sworn before me at _____, on the _____ day of _____ 18____, in the presence and hearing of the before-named prisoner.

J. L.

(N) See s. 31.

(27) STATEMENT OF THE ACCUSED. (j)

Canada,
Province of _____,
District (or County,
United Counties, or
as the case may be,) _____
of _____

A. B. stands charged before the undersigned, (one) of Her Majesty's Justices of the Peace, in and for the District (or

(j) A separate statement need not be used for each accused person, where more than one concerned in the same offence; but all the names stated at the top, and after giving the statement made by the first, say for the second prisoner,—"*thereupon the said E. F. saith as follows:*" and so on with each of them.

County, United Counties, or *as the case may be*) aforesaid, this
 day of _____, in the year of Our Lord
 for that the said A. B., on _____, at _____, &c.,
as in the captions of the depositions;) And the said charge being
 read to the said A. B., and the witnesses for the prosecution,
 C. D. and E. F., being severally examined in his presence, the
 said A. B. is now addressed by me as follows: "Having heard
 "the evidence, do you wish to say anything in answer to the
 "charge? You are not obliged to say anything, unless you
 "desire to do so; but whatever you say will be taken down in
 "writing, and may be given in evidence against you at your
 "trial." Whereupon the said A. B. saith as follows: (*Here state
 whatever the prisoner may say, and in his very words as nearly as
 possible. Get him to sign it if he will.*)

A. B.

Taken before me, at _____, at the day and year first
 above mentioned.

J. S.

(28) MEMORANDUM TO BE WRITTEN ON DOCUMENTS PRO-
 DUCED IN EVIDENCE. (Not in Statute. Oke's For. p.
 502. No. 44.)

This is the plan (*or as the case may be*) produced to me, the
 undersigned, (*one*) of Her Majesty's Justices of the Peace for the
 (*county*) of _____, on the examination of A. B., charged
 with arson, (forgery, &c.,) and referred to in the examination of
 C. D. touching the said charge, taken before me this
 day of _____ 18 _____.

J. S.

(O 1) See s. 36.

(29) RECOGNIZANCE TO PROSECUTE OR GIVE EVIDENCE.

Canada,
 Province of _____,
 District (*or* County,
 United Counties, *or*
as the case may be,)
 of _____

Be it remembered, That on the _____ day of _____,
 in the year of our Lord _____, C. D. of _____,
 in the _____ of _____, in the (*Township*) of _____,

in the said District (or County, &c.,) of _____, (farmer), personally came before me, one of Her Majesty's Justices of the Peace in and for the said District (or County, United Counties, or as the case may be) of _____, and acknowledged himself to owe to Our Sovereign Lady the Queen, Her Heirs and Successors, the sum of _____ of good and lawful current money of Canada, to be made and levied of his goods and chattels, lands, and tenements, to the use of our said Sovereign Lady the Queen, Her Heirs and Successors, if the said C. D. shall fail in the condition endorsed.

Taken and acknowledged the day and year first above mentioned, at _____ before me.

J. S.

CONDITION TO PROSECUTE.

The condition of the within (or above) written recognizance is such that whereas one A. B. was this day charged before me, J. S., Justice of the Peace within mentioned, for that (&c., as in the caption of the depositions;) if therefore, he the said C. D. shall appear at the next Court of Oyer and Terminer or General Goal Delivery, (or at the next Court of General or Quarter Sessions of the Peace) to be holden in and for the District (or County, United Counties, or as the case may be,) of _____, and there prefer or cause to be preferred a Bill of Indictment for the offence aforesaid, against the said A. B. and there also duly prosecute such indictment, then the said Recognizance to be void or else to stand in full force and virtue.

CONDITION TO PROSECUTE AND GIVE EVIDENCE.

(Same as the last form, to the asterisk,* and then thus:—“And there prefer or cause to be preferred a Bill of Indictment against the said A. B. for the offence aforesaid, and duly prosecute such Indictment, and give evidence thereon, as well to the Jurors who shall then enquire into the said offence, as also to them who shall pass upon the trial of the said A. B., then the said Recognizance to be void, or else to stand in full force and virtue.”

CONDITION TO GIVE EVIDENCE.

(Same as the last form but one, to the asterisk,* and then thus:—“And there give such evidence as he knoweth upon a Bill of Indictment to be then and there preferred against the said A. B. for the offence aforesaid, as well to the Jurors who shall then enquire of the said offence, as also to the Jurors who shall pass upon the trial of the said A. B. if the said Bill shall be found a True Bill, then the said Recognizance to be void, otherwise to remain in full force and virtue.”

(O 2) See s. 37.

(30) NOTICE OF THE SAID RECOGNIZANCE TO BE GIVEN
TO THE PROSECUTOR AND HIS WITNESSES.

Canada,	}
Province of	
District (or County,	
United Counties, or	
as the case may be,) of	

Take notice that you C. D. of _____, are bound in the sum of _____ to appear at the next Court of Oyer and Terminer and General Gaol Delivery, (or at the next Court of General Quarter Sessions of the Peace, in and for the District (or County, United Counties, or as the case may be,) of _____ to be holden at _____, in the said District (County, &c.,) and then and there (prosecute and) give evidence against A. B., and unless you then appear there, (prosecute and) give evidence accordingly, the Recognizance entered by you will be forthwith levied on you.

Dated this _____ day of _____ one thousand eight hundred and _____

J. S.

(31) THE LIKE WITH VARIATION WHEN THERE IS A
SURETY FOR A WITNESS. (Not in Statute. Oke's For.
p. 501. No. 58.)

Take notice, that you C. D. of _____ &c., are bound in the sum of _____ pounds to appear (or for the appearance of L. M., of &c., a minor or the wife of J. M. of &c., as the case may be) at the next Court of General Quarter Sessions of the Peace (or Oyer and Terminer and General Gaol Delivery) in and for the said (County) of _____, and then and there to (prosecute and) give evidence against A. B. for (felony), and unless you (he) then appear (appears and prosecutes) and give evidence accordingly, the Recognizance entered into by you will be forthwith levied on you.

Dated this

_____ day of _____, 18 ____
J. S., the Justice of the Peace for the said
(County) of _____, before whom
the Recognizance was entered into.

(P 1) See s. 39.

(32) COMMITMENT OF A WITNESS FOR REFUSING TO
ENTER INTO THE RECOGNIZANCE.

Canada,	}
Province of	
District (or County,	
United Counties, or	
as the case may be,) at	
of	

To all or any of the Constables or other Peace Officers in the said District (or County, &c.,) of _____, and to the Keeper of the Common Goal of the said District, (or County, &c., or as the case may be,) at _____, in the said District (or County, &c., or as the case may be, of _____ :

Whereas A. B. was lately charged before the undersigned, (or name of Justice of the Peace) (one) of Her Majesty's Justices of the Peace in and for the said District (or County, &c.,) of _____, for that (&c., as in the Summons to the Witness,) and it having been made to appear to (me) upon oath that E. F., of _____, was likely to give material evidence for the prosecution, (I) duly issued (my) Summons to the said E. F. requiring him to be and appear before (me) on _____, at _____ or before such other Justice or Justices of the Peace as should then be there, to testify what he should know concerning the said charge so made against the said A. B. as aforesaid; and the said E. F. now appearing before (me) (or being brought before (me) by virtue of a Warrant in that behalf to testify as aforesaid,) hath been now examined before (me) touching the premises, but being by (me) required to enter into a Recognizance conditioned to give evidence against the said A. B., hath now refused so to do: These are therefore to command you the said Constables or Peace Officers, or any one of you, to take the said E. F. and him safely convey to the Common Goal at _____, in the District (or County, &c.,) aforesaid, and there deliver him to the said Keeper thereof, together with this Precept; and I do hereby command you, the said Keeper of said Common Goal, to receive the said E. F. into your custody in the said Common Goal, there to imprison and safely keep him until after the trial of the said A. B. for the offence aforesaid, unless in the meantime the said E. F. shall duly enter into such Recognizance as aforesaid, in the sum of _____, before some one Justice of the Peace for the said District, (or County, United Counties, or as the case may be,) conditioned in the usual form to appear at the next Court of (Oyer and Terminer, or General Gaol Delivery, or General or Quarter Sessions of the Peace,)

to be holden in and for the said _____, and there to give evidence before the Grand Jury upon any Bill of Indictment which may then and there be preferred against the said A. B. for the offence aforesaid, and also to give evidence upon the trial of the said A. B. for the said offence, if a True Bill should be found against him for the same.

Given under my Hand and Seal, this _____ day of _____, at _____, in the District (or County, &c.) aforesaid.

J. S.

(P. 2) See s. 40.

(33) SUBSEQUENT ORDER TO DISCHARGE THE WITNESS.

Canada,
Province of _____,
District (or County, _____,
United Counties, or _____,
as the case may be,) _____
of _____

To the Keeper of the Common Gaol, at _____, in the District (or County, &c.) of _____ aforesaid :

Whereas by (my) order dated the _____ day of _____ (instant) reciting that A. B. was lately before then charged before (me) for a certain offence therein mentioned, and that E. F. having appeared before (me,) and being examined as a witness for the prosecution on that behalf, refused to enter into Recognizance to give evidence against the said A. B., and I therefore thereby committed the said E. F. to your custody, and required you safely to keep him until after the trial of the said A. B. for the offence aforesaid, unless in the meantime he should enter into such Recognizance as aforesaid; and whereas for want of sufficient evidence against the said A. B., the said A. B. has not been committed or holden to bail for the said offence, but on the contrary thereof has been since discharged, and it is therefore not necessary that the said E. F. should be detained longer in your custody: These are therefore to order and direct you the said Keeper to discharge the said E. F. out of your custody, as to the said commitment, and suffer him to go at large.

Given under my Hand and Seal, this _____ day of _____, in the year of Our Lord _____, at _____, in the District (or County, &c.) aforesaid.

J. S. [L. S.]

(Q 1) See s. 41.

(34) WARRANT REMANDING A PRISONER.

Canada,
 Province of
 District (or County,
 United Counties,) or
 as the case may be,
 of

To all or any of the Constables and other Peace Officers in the said District (or County, United Counties, or as the case may be,) of , and to the Keeper of the (Common Gaol or Lock-up House) , in the said District or County, &c., of :

Whereas A. B. was this day charged before the undersigned (one) of Her Majesty's Justices of the Peace in and for the said District (or County, United Counties, or as the case may be,) of

, for that (&c., as in the Warrant to apprehend) and it appears to (me) to be necessary to remand the said A. B.: These are therefore to command you, in Her Majesty's name, forthwith to convey the said A. B. to the (Common Gaol or Lock-up House,) at , in the said District (or County, &c.,) and there to deliver him to the Keeper thereof, together with this Precept; and I hereby command you the said Keeper to receive the said A. B. into your custody in the said (Common Gaol or Lock-up House,) and there safely keep him until the day of

, (instant) when I hereby command you to have him at* , at o'clock in the (fore) noon of the same day before (me) or before some other Justice or Justices of the Peace for the said District (or County, United Counties, or as the case may be,) as may then be there, to answer further to the said charge, and to be further dealt with according to law, unless you shall be otherwise ordered in the meantime.

Given under my Hand and Seal, this day of in the year of our Lord , at in the District (or County, &c.,) of aforesaid.

J. S. [L. S.]

(35) ORDER TO BRING UP ACCUSED BEFORE EXPIRATION OF THE REMAND. (Not in Statute, Oke's For. p. 496, No. 31.)

To the Keeper of the (*Common Gaol*) at _____ in the
said (*County*) of _____ :

to wit } Whereas A. B. (hereinafter called the "accused" (i)
 } was on the _____ day of _____
committed (by me) to your custody in the said (*Common Gaol*),
charged for that (&c. *as in the warrant remanding the prisoner*), and by
the warrant in that behalf* you were commanded to have him
at _____ on the _____ day of _____ now
(next), at _____ o'clock in the forenoon, before such Justice or
Justices of the Peace for the said (*County*) as might then be there,
to answer further to the said charge, and to be further dealt with
according to law.

(*or shortly, from the asterisk,* "he was remanded to the
day of _____ next"*), unless you should be otherwise ordered
in the meantime: And whereas it appears to me, the undersigned,
one of Her Majesty's Justices of the Peace in and for the said
(*County*) of _____, (*or me the said Justice*), to be expedient
the said accused should be further examined before the expiration
of the said remand: These are therefore to order you in Her
Majesty's name to bring and have the said accused at (&c., *follow
from the asterisk in the form No. 34 supra to the end.*)

(Q 2) See s. 44.

(36) RECOGNIZANCE OF BAIL INSTEAD OF REMAND ON AN ADJOURNMENT OF EXAMINATION.

Canada,
Province of _____,
District (*or. County,*
United Counties, *or*
as the case may be),
of _____

Be it remembered, That on the _____ day of _____,
in the year of our Lord _____, A. B. of _____,
(*laborer*) L. M. of _____ (*grocer*), and N. O. of _____,
(*butcher*) personally came before me, (*one*) of Her Majesty's Justices

(i) In order to prevent repetition of names, especially where there are several, it is now become usual to say here "hereinafter the accused"; afterwards referring to him or them as "the said accused," merely.

of the Peace for the said District (*or County, United Counties, or as the case may be*), and severally acknowledged themselves to owe to our Sovereign Lady the Queen, Her Heirs and Successors, the several sums following, that is to say: the said A. B. the sum of _____ and the said L. M. and N. O. the sum of _____

each, of gold and lawful current money of Canada, to be made and levied of their several goods and chattels, lands and tenements respectively, to the use of our said Lady the Queen, Her Heirs and Successors, if he, the said A. B., fail in the condition endorsed.

Taken and acknowledged the day and year first above mentioned, at _____ before me.

J. S.

CONDITION.

The condition of the within written recognizance is such, that whereas the within bounden A. B. was this day (*or on last past*) charged before me for that (*&c., as in the Warrant:*) And whereas the examination of the Witnesses for the prosecution in this behalf is adjourned until the _____ day of _____

(*instant:*) If therefore the said A. B. shall appear before me on the said _____ day of _____ (*instant*), at _____ o'clock in the (*fore*) noon, or before such other Justice or Justices of the Peace for the said District (*or County or United Counties, or as the case may be*), as may then be there, to answer (*further*) to the said charge, and to be further dealt with according to law, the said recognizance to be void, or else to stand in full force and virtue.

(Q 3) See s. 44.

(37) NOTICE OF RECOGNIZANCE TO BE GIVEN TO THE ACCUSED AND HIS SURETIES.

Canada,
Province of _____,
District (*or County,*
United Counties, *or*
as the case may be,)
of _____

Take notice that you A. B. of _____, are bound in the sum of _____, and your Sureties, L. M. and N. O. in the sum of _____, each, that you A. B. appear before me J. S. one of Her Majesty's Justices of the Peace for the District (*or County, United Counties, or as the case may be*), of _____,

on _____, the _____ day of _____ (*instant*), at _____ o'clock in the (*fore*) noon, at _____, or before such other Justice or Justices of the same District, (*or County, United Counties, or as the case may be*) as may then be there, to answer (*further*) to the charge made against you by C. D. and to be further dealt with according to law; and unless you A. B. personally appear accordingly, the Recognizance entered into by yourself and Sureties will be forthwith levied on you and them.

Dated this _____ day of _____, one thousand eight hundred and _____

J. S.

(Q 4) See s. 45.

(38) CERTIFICATE OF NON-APPEARANCE TO BE ENDORSED ON THE RECOGNIZANCE.

I hereby certify that the said A. B. hath not appeared at the time and place, in the above condition mentioned, but therein hath made default, by reason whereof the within written Recognizance is forfeited.

J. S.

(R 1) See s. 47.

(39) WARRANT TO CONVEY THE ACCUSED BEFORE A JUSTICE IN THE COUNTY IN WHICH THE OFFENCE WAS COMMITTED.

Canada,
Province of _____,
District (*or County, United Counties, or as the case may be*),
of _____

To all or any of the Constables, or other Peace Officers in the said District (*or County, United Counties, or as the case may be*) of _____

Whereas A. B. of _____ (*laborer*), hath this day been charged before the undersigned (*one*) of Her Majesty's Justices of the Peace in and for the said District (*or County, United Counties, or as the case may be*) of _____, for that (*&c. as in the Warrant to apprehend*); And whereas (*I*) have taken the deposition of

C. D. a witness examined by (*me*) in this behalf, but inasmuch as (*I*) am informed that the principal witnesses to prove the said offence against the said A. B. reside in the District (*or County, United Counties, or as the case may be*), of _____ where the said offence is alleged to have been committed : These are therefore to command you, in Her Majesty's name, forthwith to take and convey the said A. B. to the said District (*or County, United Counties, or as the case may be*) of _____ and there carry him before some Justice or Justices of the Peace in and for that District (*or County, United Counties, or as the case may be*), and near unto the (*Township of* _____) where the offence is alleged to have been committed, to answer further to the said charge before him or them, and to be further dealt with according to law ; and (*I*) hereby further command you to deliver to the said Justice or Justices the information in this behalf, and also the said deposition of C. D. now given into your possession for that purpose, together with this Precept.

Given under Hand and Seal, this _____ day of _____, in the year of our Lord _____, at _____, in the District (*or County, &c.*) of _____ aforesaid.

J. S.]L. S.]

(R 2) See s. 49.

(40) RECEIPT TO BE GIVEN TO THE CONSTABLE BY THE JUSTICE FOR THE COUNTY IN WHICH THE OFFENCE WAS COMMITTED.

Canada,
Province of _____,
District (*or County, United Counties, or as the case may be*),
of _____

I, J. P. one of Her Majesty's Justices of the Peace, in and for the District (*or County, &c.*) of _____, hereby certify that W. T. Constable, *or* Peace Officer, of the District (*or County, United Counties, or as the case may be*) of _____, has on this _____ day of _____, one thousand eight hundred and _____, by virtue of and in obedience to a Warrant of J. S., Esquire, one of Her Majesty's Justices of the Peace in and for the District (*or County, United Counties, or as the case may be*) of _____, produced before me, one A. B. charged before the said J. S. with having (*&c., stating shortly the offence.*) and delivered him into the

custody of _____ by my direction, to answer to the said charge, and further to be dealt with according to law, and has also delivered unto me the said warrant, together with the information (*if any*) in that behalf, and the deposition (*s*) of C. D. (*and of* _____) in the said warrant mentioned, and that he has also proved to me upon oath, the hand-writing of the said J. S. subscribed to the same.

Dated the day and year first above mentioned, at _____, in the said District (*or County, &c.* of _____

J. P.

(S 1) See s. 52.

(41)

RECOGNIZANCE OF BAIL.

Canada,
Province of _____,
District (*or County,*
United Counties, *or*
as the case may be),
of _____

Be it remembered, that on the _____ day of _____ in the year of our Lord _____, A. B. of _____, (*laborer*), L. M. of _____ (*grocer*), and N. O. of _____, (*butcher*), personally came before (*us*) the undersigned, (*two*) of Her Majesty's Justices of the Peace for the District (*or County, United Counties, or as the case may be,*) of _____ and severally acknowledged themselves to owe to our Sovereign Lady the Queen, Her Heirs and Successors, the several sums following, that is to say: the said A. B. the sum of _____, and the said L. M. and N. O. the sum of _____ each, of good and lawful current money of Canada, to be made and levied of their several goods and chattels, lands and tenements respectively, to the use of Our said Sovereign Lady the Queen, Her Heirs and Successors, if he, the said A. B., fail in the condition endorsed.

Taken and acknowledged the day and year first above mentioned. at _____ before us.

J. S.

J. N.

CONDITION.

The condition of the within written Recognizance is such, that whereas the said A. B. was this day charged before us (*us*), the Justices within mentioned for that (*&c., as in the Warrant*); if there fore the said A. B. will appear at the next Court of Oyer and

Terminer (or General Gaol Delivery (or Court of General or Quarter Sessions of the Peace) to be holden in and for the District (or County, United Counties, or as the case may be) of and there surrender himself into the custody of the Keeper of the Common Gaol or Lock-up House) there, and plead to such indictment as may be found against him by the Grand Jury, for and in respect to the charge aforesaid, and take his trial upon the same, and not depart the said Court without leave, then the said Recognizance to be void, or else to stand in full force and virtue.

(S 2) *See s. 52.*

NOTICE OF THE SAID RECOGNIZANCE TO BE GIVEN TO THE
ACCUSED AND HIS BAIL.

Take notice that you A. B., of _____, are bound in the sum of _____, and your sureties (L. M. and N. O.) in the sum of _____, each, that you A. B. appear (*&c., as in the condition of the Recognizance,*) and not depart the said Court without leave; and unless you, the said A. B., personally appear and plead, and take your trial accordingly, the Recognizance entered into by you and your Sureties shall be forthwith and levied on you and them.

Dated this _____ day of _____, one thousand eight hundred and _____

J. S.

(S 3) ss, 53, 55.

(42) WARRANT OF DELIVERANCE ON BAIL BEING GIVEN
FOR A PRISONER ALREADY COMMITTED.

Canada,	}
Province of _____,	
District (or County,	
United Counties, or	
as the case may be),	
of _____,	

To the Keeper of the Common Gaol of the District (or County, United Counties, or as the case may be) of _____ at _____, in the said District (or County, United Counties, or as the case may be)

Whereas A. B. late of _____, (laborer,) hath before (us) (two) of Her Majesty's Justices of the Peace in and for the said District (or County, United Counties, or as the case may be) of _____

entered into his own Recognizance, and found sufficient sureties for his appearance at the next Court of Oyer and Terminer or General Gaol Delivery (or Court of General or Quarter Sessions of the Peace) to be holden in and for the District (or County, United Counties, or as the case may be) of _____, to answer Our Sovereign Lady the Queen, for that (i.e., as in the commitment), for for which he was taken and committed to your said Common Gaol: These are therefore to command you, in Her said Majesty's name, that if the said A. B. do remain in your custody in the said Common Gaol for the said cause, and for no other, you shall forthwith suffer him to go at large.

Given under our Hands and Seals, this _____ day of _____, in the year of our Lord _____, at _____ in the District (or County, &c.,) aforesaid.

J. S. [L. s.]

J. N. [L. s.]

(T 1) See s. 56.

(43)

WARRANT OF COMMITMENT.

Canada,
Province of _____,
District (or County,
United Counties, or
as the case may be),
of _____

To all or any of the Constables, or other Peace Officers, in the District (or County, United Counties, or as the case may be) of _____, and to the Keeper of the Common Gaol of the District (or County, United Counties, or as the case may be) at _____, in the said District (or County, &c.,) of _____

Whereas A. B. was this day charged before (me) J. S. (one) of Her Majesty's Justices of the Peace in and for the said District (or County, United Counties, or as the case may be) of _____ on the oath of C. D., of _____ (farmer,) and others, for that, (i.e., stating shortly the offence); These are therefore to command you the said Constables or Peace Officers, or any of you, to take the said A. B., and him safely convey to the Common Gaol at _____ aforesaid, and there deliver him to the Keeper thereof, together with this Precept; And I do hereby command you the said Keeper of the said Common Gaol to receive the said A. B. into your custody in the said Common Gaol, and there safely

to keep him until he shall be thence delivered by due course of law.

Given under my Hand and Seal, this _____ day of _____
in the year of our Lord _____, at _____, in the District
(or County, &c.,) of _____ aforesaid.

J. S. [L. S.]

(T 2) See s. 57.

(44) GAOLERS' RECEIPT TO THE CONSTABLE FOR THE PRISONER.

I hereby certify that I have received from W. T. Constable, of the District (or County, &c.,) of _____, the body of A. B., together with a Warrant under the Hand and Seal of J. S., Esquire, one of Her Majesty's Justices of the Peace for the said District (or County, United Counties, or as the case may be,) of _____, and that the said A. B. was (sober, or as the case may be,) at the time he was delivered into my custody.

P. K.

Keeper of the Common Gaol of the said District (or County, &c.)

APPENDIX.

(45) COMPLAINT OF BAIL FOR A PERSON CHARGED WITH AN INDICTABLE OFFENCE IN ORDER THAT HE MIGHT BE COMMITTED IN DISCHARGE OF THEIR RECOGNIZANCES. (Not in Statute. Oke's For. p. 514, No. 70.)

*Proceed as in form No. Qy. 1, ante to the asterisk *altering it to two complaints if there be more than one surety, then thus:* that they the said C. D. and E. F. were on the _____ day of _____ now last past, severally and respectively duly bound by recognizance before J. P., Esquire, one of Her Majesty's Justices of the Peace for the said (county) of _____, in the sum of _____ each upon condition that one A. B., of &c., should appear at the next term of the Court of Queen's Bench (Crown Side) for the District of _____ (or Court of Oyer and Terminer and General Gaol Delivery, or Court of General Quarter Sessions of the Peace), to be holden in and for the (County) of _____, and there surrender himself into the custody of the Keeper of the (Common Gaol) there, and plead to such indictment as might be found against him by the grand jury for or in

respect of the charge of (stating the charge shortly), and take his trial upon the same and not depart the said Court without leave ; and that these complainants have reason to suspect and believe and do verily suspect and believe, that the said A. B. is about to depart from this part of the country ; and therefore they pray of me the said Justice that I would issue my warrant of apprehension of the said A. B. in order that he may be surrendered to prison in discharge of them his said bail.

Before me, J. P.

C. D.

E. F.

(46) WARRANT TO APPREHEND THE PERSON CHARGED.

(Not in Statute. (k) Oke's p. 514, No. 71. Venue should be as in No. 43.)

To all or any of the Constables and other Peace Officers in the said District (or County, United Counties, or as the case may be) of and to C. D. and E. F. severally and respectively.

Whereas you the said C. D. and E. F. have this day to wit } made complaint to me the undersigned, one of Her Majesty's Justices of the Peace in and for the said (County) of

that you the said C. D. and E. F. were &c., (as in the complaint, No. (45), *supra*, to the end) : These are therefore to authorize you the said C. D. and E. F., and also to command you the said (Constable or other Peace Officer), in Her Majesty's name forthwith to apprehend the said A. B. and to bring him before me or some Justice or Justices of the Peace in and for the said (County), to the intent that he may be committed to the (Common Gaol) in and for the said (County) until the next Court of (Oyer and Terminer and General Gaol Delivery (or Court of General Quarter Sessions of the Peace to be holden in and for the said (County) of or &c. as the case may be, unless he find new and sufficient sureties to become bound for him in such recognizance as aforesaid.

Given under my Hand and Seal, this day of in the year of our Lord , at in the (County) aforesaid.

J. S. [L. s.]

(k) The bail may apprehend their principal without warrant (1 Hales Sum. 96 ; Saunders Prac. p. 187) and therefore this warrant is not indispensably requisite but it may prevent a breach of the peace.

(47) COMMITMENT OF THE PERSON CHARGED ON SURRENDER OF HIS BAIL AFTER APPREHENSION UNDER A WARRANT. (Not in Statute. Oke's For. p. 515, No. 72.)

To all or any of the Constables, or other Peace Officers in the District (or County, United Counties, or as the case may be) of _____, and to the Keeper of the Common Gaol of the District (or County, United Counties, or as the case may be), at _____, in the said District (or County, &c.) of _____

Whereas on the _____ day of _____ instant to wit _____ } complaint was made to me the undersigned (or J. S.) one of Her Majesty's Justices of the Peace in and for the said (County) of _____, by C. D. and E. F., of &c., that (as in the complaint No. (45), *supra* to the end), I (or the said Justice) thereupon issued my warrant authorizing the said C. D. and E. F. and also commanding the said Constables of _____ and all other Peace Officers in the said (County) of _____, in Her Majesty's name forthwith to apprehend the said A. B., and to bring him (follow to end of warrant, No. (46), *supra*); and whereas the said A. B. hath been apprehended under and by virtue of the said Warrant, and being now brought before me the said Justice (or me the undersigned, one &c.) and surrendered by the said C. D. and E. F. his said Sureties, in discharge of their said Recognizances. I have required the said A. B. to find new and sufficient sureties to become bound for him in such Recognizance as aforesaid, but the said A. B. hath now refused so to do: These are therefore to command you the said Constables (or other Peace Officers) in Her Majesty's name, forthwith to take and safely to convey the said A. B. to the said (Common Gaol) at _____, in the said (County) and there deliver him to the Keeper thereof, together with this precept; and I hereby command you the said Keeper to receive the said A. B. into your custody in the said (Common Gaol) and him there safely to keep until the next Court of Oyer and Terminer and General Gaol Delivery (or Court of General Quarter Sessions of the Peace) to be holden in and for the said (County) of _____, unless in the meantime the said A. B. shall find new and sufficient Sureties to become bound for him in such recognizance as aforesaid.

Given &c., (as form No. 46, *supra*.)

CAP. XXXI.

An Act respecting the duties of Justices of the Peace out of Sessions, in relation to summary convictions and orders.

" Assented to 22nd June, 1869."

Preamble.

WHEREAS it is expedient to assimilate, amend and consolidate the statute law of the several Provinces of Quebec, Ontario, Nova Scotia and New Brunswick, respecting the duties of Justices of the Peace out of Sessions in relation to summary convictions and orders, and to extend the same as so amended to all Canada : Therefore, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows :

When an information is laid, &c., before a Justice of the Peace, &c., such Justices may issue a summons to the party accused.

Form of Summons.

1. In all cases where an information is laid before one or more of Her Majesty's Justices of the Peace for any Territorial Division of Canada, that any person, being within the jurisdiction of such Justice or Justices, has committed or is suspected to have committed any offence or act

over which the Parliament of Canada has jurisdiction, and for which he is liable by law, upon a Summary Conviction for the same before a Justice or Justices of the Peace, to be imprisoned or fined, or otherwise punished, and also in all cases where a complaint is made to any such Justice or Justices in relation to any matter over which the Parliament of Canada has jurisdiction, and upon which he or they have authority by law to make any order for the payment of money or otherwise, such Justice or Justices of the Peace may issue his or their Summons (A), directed to such person, stating shortly the matter of the information or complaint and requiring him to appear at a certain time and place, before the same Justice or Justices, or before such other Justice or Justices of the same Territorial Division as may then be there, to answer to the said information or complaint and to be further dealt with according to law.

The Imperial Act 11 and 12 Vic. c. 43 introduced great changes into the law relating to summary convictions and orders. Previous to the passing of that statute ample field was afforded for raising technical objections, and there can be no doubt that the objects of Parliament in passing it, were to simplify the duties of Justices of the Peace in such matters, to do away in great measure with the technicalities which beset and embarrassed them, and to define their duties in a clear and positive manner.

The Parliament of the old Province of Canada soon recognized the benefits resulting from a uniform system, and with but few alterations introduced the greater number of

the provisions of the Imperial Act 11 and 12 Vic. c. 43 into the Provincial Act 14 and 15 Vict. c. 95.

From those two acts, with but few changes, has been compiled the 32 and 33 Vic. c. 31, now under consideration.

Information.

In this Statute the distinction between an "information" and a "complaint" should always be borne in mind. An information is laid against a party charged with the commission of, or who is suspected to have committed, any offence or act over which the Parliament of Canada has jurisdiction, and for which he is liable by law, upon a summary conviction, to be imprisoned or fined, or otherwise punished.

Complaint.

A complaint is made when the person is liable by law, to have an order made upon him by Justices, to pay money, or to do some act which he has refused or neglected to do, contrary to law.

Information requisites of

It is requisite in all summary proceedings of a penal nature, that there should be an information or complaint, which is the basis of all the subsequent proceedings, and without which the Justice is not justified in intermeddling, except where he is empowered to convict on view as by 8 Hen. 6. c. 9 forcible detainer. (Paley p. 54.)

A sufficient information, by competent persons, relating to a matter within the magistrate's cognizance, gives him jurisdiction irrespective of the truth of the facts contained in it. (Paley 55.)

When the information must be received.

Mandamus in case of refusal.

As it is the duty of Justices to enforce the acts, the execution of which is referred to them, they cannot properly

refuse to receive an information regularly brought before them. If they should refuse the Court having power to issue a mandamus will either issue that writ or grant a rule to compel them to receive such information. (Paley p. 56.)

When it should be laid.

The information must be laid, or complaint made within the time limited by the particular statute on which it is founded; if no period is fixed by the statute it must be within three months from the time when the matter of the complaint or information arose, except in that part of the County of Saguenay in the Province of Quebec which extends eastward from Portneuf as far as the limits of Canada including all the Islands adjoining (*sic*) thereto, wherein the limit is extended to twelve months from the time when the matter of the complaint or information arose (s. 26 post). Care must be taken that it is not laid prematurely as occasionally by statute an interval must elapse before any prosecution. (*Vide* Imp. Act 19 Geo. 3. s. 2.—Paley 57.)

If the statute creating the offence provide that the party accused be "convicted" within a certain time, the laying of the information merely will not suffice. (*Dowell vs. Benningfold* 1. Car & Mar. 9; *Rex vs. Bellamy* 1. B. & C. 500; *R. vs. Tolley* 3. East 467; *Okes' Syn.* 106).

In almost every case in which an act is to be done within a certain time after the happening of an event, the Courts have adopted as a rule, that the day on which the event happened (e. g. the commission of the offence, or the time when the matter of complaint arose) is to be excluded, and that on which the act is done (e. g. the preferring the information or complaint) is to be included. (*Pellew vs. Inhabitants of Wonford* 9. B. & C. 134; *Lester vs. Garland* 15 Vesey 248; *Williams vs. Burgess* 12 A. & E. 635; *Freeman*

vs. Reed 32 L. J. (N. S.) M. C. 226). If the time be expressed by the year or an aliquot part, as a half, a quarter &c., of a year, the computation is by calendar months of twelve to the year (Vic. 3, c. 1, s. 7). In the computation of the month's notice of action to a Justice required by Statute, the day of giving the notice and the day of suing out the writ are both excluded (Young vs. Higgon 6 M. & W. 49, 52). The same mode of computation has always been adopted where the Statute uses the words "clear days" or so many "days at least." (Mitchell vs. Forster 12 A. & E. 472; R. vs. Justices of Shropshire 8 A. & E. 173; Louch vs. Empsey 4 B. & Ald. 522; Paley p. 45).

Fractions of a day are not taken any notice of in law. (Lester vs. Garland *supra*; Hardy vs. Ryle 9 B. & C. 663; Field vs. Jones 9 East 154; Latless vs. Holmes 4 T. R. 660; Freeman vs. Reed *supra*).

Every complaint or information (whether by a party aggrieved or an informer may be laid or made by the complainant or informant in person, or by his counsel or attorney or other person authorized in that behalf (s. 25 post). It is conceived however that this provision will not apply to those cases where a particular person is required by the statute to lay the information or make the complaint. (Oke's Syn. 107).

Where the offence is an individual grievance, and the discharge or conviction on the Summary proceeding is a bar to all other proceedings, as in cases of assault under the 43, 44 and 45 sections of 32 and 33 Vic. cap. 20, the party aggrieved alone can be the informant, and where by the Statute a particular person is required to lay the information or make the complaint, no other can institute the proceeding. In all other cases where the offence is a matter of public policy and

utility and concerns the public morals, any person has a general power to sue for the penalties (per Cockburn C. J. in *Cole vs. Coulton* 29 L. J. (N. S.) M. C. 125).

Although the 32 and 33 Vic. c. 31 does not expressly require the information to be in writing it evidently contemplates that it should be so taken (*vide* ss. 5, 20 and 21 by which it is provided that it shall not be necessary that a complaint be in writing, unless required by some particular Act or Law on which such complaint is framed).

The information or complaint need not be on oath in the first instance unless required by some particular Statute save in the case where the Justice issues his warrant on the exhibition of the information in which case the matter of the information must always be substantiated by the oath or affirmation of the informant, or of some witness on his behalf before the warrant is issued. Whenever in other cases, the information or complaint is taken on oath, the Justices must be careful to administer the oath before he takes the information or deposition of the party or his witness. (*R. vs. Kiddy* 4 D. & R. 734). Sometimes the Statute though it does not require the information to be on the oath of the informant, in the first instance, yet requires the charge contained in it to be substantiated on the oath of some other person being a credible witness before any proceedings are taken upon it. The deposition in all such cases should be made in the presence of the magistrate; and where it was taken in his absence by his clerk, it was held irregular, and to be no justification for proceedings founded upon it. (*Caudle vs. Seymour* 1 Q. B. 889; *R. vs. Constable*, *id.* 894 n. (a); *R. vs. Justices of Darton* 12 A. and E. 78).

Several offences.

Formerly several offences might have been included in one

information and several matters of complaint in one complaint, but now the information or complaint should be for one offence or one matter of complaint only (*Vide* s. 25). This however does not prevent a principal and an abettor from being charged in the same information. (*Vide* s. 15).

Negating exceptions.

The important rules which relate to the negating of exceptions in the description of the offence are fully treated of under the head of *Conviction* post.

Description of Defendant in certain cases.

If the Statute under which proceedings are taken extends only to persons of a particular class, office or situation of life, the Defendant should be shewn to come within the description of such persons, bearing in mind the broad rule for construing Statutes as laid down by Lord Tenterden that "where general words follow particular ones, the rule is to construe them as applicable to persons ejusdem generis" (*Sandiman vs. Breach* 7 B. & C. 100 upon the words "or other person whatsoever"). By the s. 8 of this Act the Defendant may be named or otherwise described in the warrant to the constable to apprehend.

Married women if they have committed an offence without the coercion, actual or implied of their husbands are equally liable to be proceeded against as other persons (*R. vs. Crofts* 2 Str. 1120; *R. vs. Hammond* 2 Lea. 499; *R. vs. Williams* 10 Mod. 335; *R. vs. Cruse* 8 C. & P. 541; *Paley* 59 and 60; *Stone* 65).

Husband and wife may also be jointly convicted and punished for any offence of which they have been jointly guilty.

Females, Infants.

Female offenders can be convicted of any offence punish-

able on summary conviction as well as male. Infants above seven years of age may be prosecuted for penalties in respect of any injuries committed by them if sufficiently *doli capaces* to incur responsibility (Gray vs. Cookson et al. 16. East. 13, 27, 28; R. vs. Sutton 3 A. & E. 597; R. vs. Lard 12, Q. B. 757, 761; Paley 60 n. (x); Okes Syn. iii; Stone 65).

In some cases a man may be brought within a penal statute by the acts of his agents or servants, according to the maxim *qui facit per alium facit per se*, when the persons doing the act are proved to be such agents or servants. The employment of an agent in the defendant's usual course of business is sufficient evidence in such cases, whence the magistrates may, if they think fit, presume that such an agent was authorised to do the prohibited act with which it is sought to charge the principal (Okes Syn. iii). But if the illegal act is not done in the usual course of the employers business, but outside thereof, evidence must be given to fasten upon the employer the guilt of the act complained of as having been by him authorized. (Harrison vs. Leaper 5 L. T. N. S. 640; Reg. vs. Handley 9 L. T. N. S. 827; Wilson vs. Stewart 8 L. T. N. S. 277; Searle vs. Reynolds 14 L. T. N. S. 518).

Joint offenders.

The prosecutor may prosecute all or any of the parties, and the omission of a *particeps criminis* cannot, as in cases of joint contracts in civil actions, be taken advantage of by those who are prosecuted.

Where several persons have taken part in committing the same offence at the same time and place, they can all be joined in the same information. (Paley 61; Okes Syn. 113; Saunders 89).

Statement of offence.

If distinct and complete acts are committed on different

days, the offences are distinct and subject to separate penalties (R. vs. Matthews 10 Mod. 27); but ambiguity arises upon a repetition of similar acts in pursuance of one object on the same day. No general rule can be laid down applicable to such cases, which must be decided chiefly by the wording of the Statute creating the offence. (Paley 219; Marriott vs. Shaw Cowp. 278; R. vs. Love!! 7 T. R. 152; Cripps vs. Durden Cowp. 640).

Vide post statement of offence in the conviction, for instructions as to setting out offence.

It is to be regretted that the old phraseology of the 14 and 15 Vic. c. 95, s. 1 has not been preserved in the section now under consideration; the words "within the jurisdiction of such Justice or Justices" in the former Statute clearly applied to the place where the offence was committed as the basis of the jurisdiction of the Justice, but from the wording of this clause, it might be imagined that the presence of the party charged in a Territorial Division vested in a Justice for that Division the right to hear and determine a case, no matter where the offence was committed, or the subject of the complaint arose, but applying the rules of construction to the ambiguous portion of the clause and construing together the 1 and 28 sections no doubt can be entertained but that the intention of the Legislature was to make the place where the matter of the complaint or information arose the basis of the jurisdiction of the Justice, as in the Imperial and old Canadian Statute.

AS TO COMPLAINTS, &c.

Computation of time.

In the case of complaints for non-payment of money, the time will commence to run from the time of notice of the sum due being received by the defendant, or the first demand

for application for payment being made upon the defendant, or from the period when the payment is by law required to be made, for there is no liability or default by the defendant till after such demand or application has been properly made and such period has arrived, although a demand may not be expressly required in that behalf. The *default* in payment does not arise till then, and that is the *matter* of the complaint. (*Vide* Parkinson vs. Mayor &c. of Blackburn 22. J. P. 418; Labalmondière vs. Addison 28 L. J. (N. S.) M. C. 25; Re Morehouse L. J. N. S. 32; Edleston vs. Francis 3 L. J. N. S. 270; Somerville vs. Mirehouse 3 L. T. N. S. 294; Oke's Syn. p. 120 n. (56). and *vide* observations on Summons in Indictable cases as to requisites *ante* p. 55.)

Service of Summons.

2. Every such Summons shall be served by a Constable or other Peace Officer, or other person to whom the same may be delivered, upon the person to whom it is directed, by delivering the same to the party personally, or by leaving it with some person for him at his last or most usual place of abode.

A Summons under this Act may be served by any person to whom it is delivered, even the informant or complainant, either by delivering it to the defendant personally or leaving it with some grown person on the premises known as his last or most usual place of abode, the person to whom it is delivered must apparently reside at place of service (R. vs. Chandler 14 East 267; Oke's Syn. 122). The Summons should be signed in duplicate, and one of them retained by the party serving (Oke's Syn. 122. n. (1)). The service where no time is limited by the particular statute should be

made a reasonable time before the period appointed therein for appearance; the sufficiency of the service is a question for the Justices to decide (*Re Williams* 16 Jur. 1060; *Ex parte Hopwood* 15 Q. B. 121; *Zohrab vs. Smith* 5 D. & L. 635), and the Court will not interfere with their decision unless it clearly appear that there was in fact no service (*Ex pte Rice Jones* 19 L. J. (N. S.) M. C. 151), or that the defendant was not allowed the interval fixed by the particular statute between the service and the time limited for appearance (*Mitchell vs. Foster*), or that the Justices have mistaken the law as to the kind of service required, and have therefore declined to entertain the matter (*R. vs. Goodrich et al* 19. L. J. (N. S.) Q. B. 415; *Paley* 72).

Where the defendant actually appears and pleads there is no longer any question upon the sufficiency or regularity of the summons. (*1 Str.* 261; *Taylor vs. Clemson* 11 Cl. & Fin. 610, 642; *R. vs. Preston* 12 Q. B. 825; *R. vs. Ward* 3 Cox. C. C. 579; *Paley* 73; *Reg. vs. Shaw* 11 L. J. (N. S.) 470; *Glen. p.* 122. note).

Proof of Service.

3. The Constable, Peace Officer, or person who serves the same, shall attend at the time and place, and before the Justice or Justices in the Summons mentioned, to depose, if necessary, to the service thereof.

Proviso as to ex parte cases.

4. But nothing hereinbefore contained shall oblige any Justice or Justices of the Peace to issue any such Summons in any case where the application for any order of Justices is by law to be made *ex parte*.

No objection allowed on account of defect or variance.

Proviso.

5. No objection shall be allowed to any information, complaint or summons, for any alleged defect therein, in substance or in form, or for any variance between such information, complaint or summons, and the evidence adduced on the part of the informant or complainant at the hearing of such information or complaint; but if any such variance appears to the Justice or Justices present and acting at such hearing to be such, that the person summoned and appearing has been thereby deceived or misled, such Justice or Justices, may, upon such terms as he or they think fit, adjourn the hearing of the case to a future day.

The words of this section certainly appear to be very comprehensive; in the first place it is provided, that no defect, in substance or in form, in an information, complaint or summons shall constitute matter of objection; in other words that however defective in substance or in form an information, complaint, or summons may be, still that to the two first the defendant must plead to the merits, and to the last urge no objection.

With reference to the summons, the provision is a good one, for on the appearance of the defendant before the Justice, the summons ceases to be of any use, the defendant pleading, not to the charge therein, but to that contained in the information.

Many of the English writers on the 11 and 12th Vic. c. 42, are of opinion that the similar clause of that act grants almost unlimited power to the informant or complainant, in

framing his information or complaint. (Saunders 2nd Ed. 18; Stone 7th Ed. 68; Paley 3rd Ed. 63).

But now-a-days it seems to be admitted that the powers of amendment do not extend to the substitution of one offence for another, or to the dealing with a case under another statute than the one upon which the information was laid. (Martin vs. Pridgeon 28 L. J. M. C. 179; Soden vs. Gray 7 L. T. N. S. 324; Reg. vs. Brickhall 23 L. J. M. C. 156; Saunders 4th Ed. 18 and 19; Glenn 99 notes; Paley 5th Ed. pp. 76, 77).

Where however upon the appearance of the defendant, the informant before he enters into the case declares his intention of establishing by the facts a charge different from the one upon which the defendant has been summoned, to which course the defendant does not object, he cannot afterwards set up a want of jurisdiction in the Justices to hear the case. (Turner App. vs. The Postmaster General Resp. 10 L. J. M. C. 10; Shepherd vs. The Postmaster General 11 L. T. N. S. 369).

Where the information charges the defendant with having committed an offence on a day certain, as for instance the 5th October and on divers other days and times between the said 5th Oct. and the laying of the information (16th Nov.) the Justices may convict him of committing the offence on any day between the 5th October and 16th Nov. (Onley vs. Gee 30 L. J. M. C. 222).

A greater latitude might, without any doubt, be indulged in so far as disregarding defects in the information is concerned, than seems now to be admitted, without being productive of any harm.

If the summons having been duly served, &c., is not obeyed, the Justice may issue his warrant.

Warrant may issue in the first instance on information supported by oath, &c.

Proviso :

Copy of warrant to be served on defendant.

6. If the person served with a Summons does not appear before the Justice or Justices at the time and place mentioned in the Summons, and it be made to appear to the Justice or Justices, by oath or affirmation, that the Summons was duly served what the Justice or Justices deem a reasonable term before the time therein appointed for appearing to the same, then the Justice or Justices, upon oath or information being made before him or them, substantiating the matter of the information or complaint to his or their satisfaction, may, if he or they think fit, issue his or their Warrant (B) to apprehend the party so summoned, and to bring him before the same Justice or Justices or before some other Justice or Justices of the Peace in and for the same Territorial Division, to answer to the said information or complaint, and to be further dealt with according to law ; or the Justice or Justices before whom any such information is laid, for any such offence as aforesaid, punishable on conviction, upon oath or affirmation being made before him or them substantiating the matter of the information to his or their satisfaction, may, if he or they think fit, instead of issuing a Summons, issue in the first

instance his or their Warrant (C) for apprehending the person against whom the information has been laid, and bringing him before the same Justice or Justices, or before some other Justice or Justices of the Peace in and for the same Territorial Division, to answer to the information and to be further dealt with according to law; Provided that where a warrant is issued in the first instance, the Justice issuing it shall furnish a copy or copies thereof, and cause a copy to be served on each party arrested at the time of such arrest.

The appearance may be by the defendant personally or by his counsel or attorney (*Bessell vs. Wilson* 1. E. & B. 489; *Paley* 76; *Glen* 126 *notis*; *Saunders* 4th Ed. 46; *Oke's Syn.* 139 n. (16); s. 36 post; contra *Stone* 207).

The person to make the affidavit of service upon the defendant is the Constable, Peace Officer or other person to whom it was delivered and by whom it was served. By s. 3 he is required to attend at its return in order to prove the service, his affidavit may be in the form (No. 2) in the Schedule.

The Magistrate or his clerk should keep a minute of the proceedings in each case, in which should be entered every step taken therein, such as calling the defendant, his appearance in person or by Counsel, his default &c.

The time which should elapse between the service and return of the summons has been already noticed. (*ante.*)

On the default of the defendant to appear either in person or by his counsel or attorney, the Justice may, the matter of the information or complaint on which the summons issued being substantiated under oath or affirmation as pointed out

by form No. (3) in the schedule, issue his warrant to apprehend the defendant.

In all cases of informations when they are substantiated by the oath of the Informant or a witness the Justice may in his discretion issue his Warrant (C) to apprehend the Defendant; but such a course should not be adopted save where the Justice is of opinion that the defendant will, if not apprehended, evade Justice. In such case moreover the Justice must cause to be served on each of the parties arrested, at the time of his arrest, a copy of the warrant under which he is arrested.

Vide ante pp. 148, 151 for instructions as to filling up the forms (B and C) and post ss. 8 and 9.

Justice may proceed ex parte, if summons duly served is not obeyed, &c.

7. If where a summons has been issued, and upon the day and at the place therein appointed for the appearance of the party summoned, the party fails to appear in obedience to the Summons then, if it be proved upon oath or affirmation to the Justice or Justices present, that a Summons was duly served upon the party a reasonable time before the time appointed for his appearance, the Justice or Justices of the Peace may proceed *ex parte* to the hearing of the information or complaint, and adjudicate thereon, as fully and effectually to all intents and purposes as if the party had personally appeared before him or them in obedience to the Summons.

If the Justice in the exercise of his discretion believes that the issue of a warrant under the preceeding section is

unnecessary after service of the Summons and the failure of the defendant to appear, on proof upon oath or affirmation to the Justice present (who need not be the Justice signing the Summons) of the service, the informant may be allowed to prove his case in the absence of the defendant, and the Justice may give his judgment either convicting the defendant or making an order upon him, or dismissing the complaint or information with or without costs as if the defendant had appeared, save that on dismissal in such case, the defendant can have no costs.

Warrant to be under hand and seal: to whom directed and what to contain.

8. Every Warrant to apprehend a Defendant that he may answer to an information or complaint shall be under the hand and seal or hands and seals of the Justice or Justices issuing the same, and may be directed to any one or more or to all of the Constables (or other Peace Officers), of the Territorial Division within which it is to be executed, or to such Constable and all other Constables in the Territorial Division within which the Justice or Justices who issued the Warrant hath or have Jurisdiction, or generally to all the Constables (or Peace Officers) within such Territorial Division, and it shall state shortly the matter of information or complaint on which it is founded, and shall name or otherwise describe the person against whom it has been issued, and it shall order the Constables (or other Peace Officers) to whom it is directed, to apprehend the Defendant, and to bring him before one or more Justice or Justices

of the Peace, of the same Territorial Division, as the case may require, to answer to the information or complaint and to be further dealt with according to law.

Vide 32 and 33 Vic. c. 36. s. 4. as to the effect of want of seal, post.

Duration of warrant, and how to be executed.

9. It shall not be necessary to make the Warrant returnable at any particular time, but the same may remain in full force until executed ; and the Warrant may be executed by apprehending the Defendant at any place in the Territorial Division within which the Justices who issued the same have jurisdiction, or, in case of fresh pursuit, at any place in the next adjoining Territorial Division, within seven miles of the border of the first mentioned Territorial Division without having the Warrant backed as hereinafter mentioned.

Vide observations on 32 and 33 Vic. c. 30 s. 19 ante p. 68.

What officer may execute it, and where.

10. In all cases where the Warrant is directed to all Constables or Peace Officers in the Territorial Division within which the Justice or Justices who issued the same have jurisdiction, any Constable or Peace Officer for any place within the limits of the jurisdiction may execute the Warrant in like manner as if the Warrant was directed specially to him by name, and notwithstanding that the place in which the Warrant is executed be not within the place for which he is a Constable or Peace Officer.

Vide observations on 32 and 33 Vic. c. 30. s. 20 ante p. 69.

Backing the Warrant in another jurisdiction : its effect.

11. If any person against whom any Warrant has been issued be not found within the jurisdiction of the Justice or Justices by whom it was issued, or, if he escapes into, or is, or is suspected to be in any place within Canada, out of the jurisdiction of the Justice or Justices who issued the Warrant, any Justice of the Peace, within whose jurisdiction such person may be or be suspected to be, upon proof upon oath or affirmation of the handwriting of the Justice or Justices issuing the Warrant, may make an endorsement upon it, signed with his name, authorizing the execution of the Warrant within his jurisdiction ; and such endorsement shall be a sufficient authority to the person bringing the Warrant, and to all other persons to whom it was originally directed, and to all Constables or other Peace Officers of the Territorial Division wherein the endorsement has been made, to execute the same in any place within the jurisdiction of the Justice of the Peace endorsing the same, and to carry the offender, when apprehended, before the Justice or Justices who first issued the Warrant or some other Justice having the same jurisdiction.

The instructions for the endorsement of a Warrant to arrest a person charged with an indictable offence will apply to the backing of a Warrant under this Section. The party must be brought however before a Justice of the Division whence the Warrant issued.

Vide observations on 32 and 33 Vic. c. 30 s. 23 ante pp. 71 and 72.

No objection allowed for want of form : but adjournment in certain cases ; and on what condition.

12. No objection shall be taken or allowed to any Warrant issued as aforesaid, for any alleged defect therein in substance or in form, or for any variance between it and the evidence adduced on the part of the Informant or Complainant, but if it appears to the Justice or Justices present and acting at the hearing, that the party apprehended under the Warrant has been deceived or misled by any such variance, such Justice or Justices may, upon such terms as he or they think fit, adjourn the hearing of the case to some future day, and in the meantime commit (D) the Defendant to the Common Gaol, or other prison, or place of security within the Territorial Division or place wherein the Justice or Justices may be acting, or to such other custody as the Justice or Justices think fit, or may discharge him upon his entering into a Recognizance (E), with or without surety or sureties, at the discretion of the Justice or Justices, (conditioned for his appearance at the time and place to which the hearing is so adjourned.)

Vide observations as to defects in summons ante p. 154 and as to commitment or discharge upon bail of defendant 32 and 33 Vic. c. 30 s. 44 ante p. 90.

Where a defendant is discharged on recognizance and fails to appear, &c.

13. In all cases where a Defendant is discharged

upon Recognizance and does not afterwards appear at the time and place in the Recognizance mentioned, the Justice who took the Recognizance, or any Justice or Justices who may then be present, having certified (F) upon the back of the Recognizance the non-appearance of the Defendant, may transmit such Recognizance to the proper Officer in the Province appointed by law to receive the same, to be proceeded upon in like manner as other Recognizances, and such Certificate shall be deemed sufficient *prima facie* evidence of the non-appearance of the said Defendant, and the Justice or Justices may issue his or their Warrant for the apprehension of the Defendant on the information or complaint.

Vide as to forfeiture of Recognizance 32 and 33 Vic. c. 30 s. 45 *ante* p. 90 and as to transmission of Recognizance 32 and 33 Vic. c. 36. s. 6. *post*.

The Justice, in all cases where the Defendant fails to appear after entering into a Recognizance, should issue his Warrant to apprehend him; but even if the warrant is not issued, or if the Defendant is not apprehended, the Justice can proceed with the case and adjudicate upon it either *ex parte* or otherwise.

Description of property of partners, municipal corporations, &c., in any information or complaint, or proceedings thereon.

14. In any information or complaint or proceedings thereon, in which it is necessary to state the ownership of any property belonging to or in possession of partners, joint tenants, parceners or

tenants in common, or *par indivis*, it shall be sufficient to name one of such persons, and to state the property to belong to the person so named and another, or others, as the case may be; and whenever in any information or complaint or the proceedings thereon, it is necessary to mention, for any purpose whatsoever, any partners, joint tenants, parceners or tenants in common, or *par indivis*, it shall be sufficient to describe them in the manner aforesaid; and whenever in any information or complaint, or the proceedings thereon, it is necessary to describe the ownership of any work or building made, maintained or repaired at the expense of the Corporation or inhabitants of any Territorial Division or place, or of any materials for the making, altering or repairing the same, they may be therein described as the property of the inhabitants of such Territorial Division or place.

Vide observations on s. 1 ante p. 151.

Aiders and abettors of offences punishable on summary conviction, how liable.

15. Every person who aids, abets, counsels or procures the commission of any offence which is punishable on summary conviction, shall be liable to be proceeded against and convicted for the same, either together with the principal offender, or before or after his conviction, and shall be liable, on conviction, to the same forfeiture and punishment as the principal offender, and may be

proceeded against and convicted either in the Territorial Division or place where the principal offender may be convicted, or in that in which the offence of aiding, abetting, counselling or procuring was committed.

A conviction cannot be procured under this section unless the principal offence has been committed, though there may be accessories after the fact in regard to felonies, there can be none such in the case of an offence punishable on summary conviction, as the above section only applies to aiding, &c. the commission of any offence. The offender may be charged with "aiding, abetting, counselling and procuring the commission of the offence, as these words constitute but one offence. (Expte Smith 27. L. J. (N. S.) M. C. 186; Glen 108 *not*; Oke's Syn. 114 n. (36).

A warrant of commitment, in the case of Smith *supra*, for aiding, abetting, counselling and procuring a person to commit an offence was held good where the offence of the accessory was described by reference to the offence of the principal, which was correctly stated.

Where the keeper of a place of public resort instructs his servant to manage it in a such a way as to be a violation of a law declaring such management an offence punishable on summary conviction, and the servant does so, the master is guilty of an offence within the act and the servant is guilty as aiding and abetting him within the Imp. Stat. 11 and 12 Vic. c. 43. s. 5. (Wilson Appelt. vs. Stewart Respdt. 3 B. & S. 913).

Summons to persons likely to give material evidence.

16. If it be made to appear to any Justice of the Peace, by the oath or affirmation of any cre-

dible person, that any person within the jurisdiction of such Justice is likely to give material evidence on behalf of the Prosecutor or complainant or Defendant, and will not voluntarily appear as a witness at the time and place appointed for the hearing of the information or complaint, the Justice shall issue his Summons (G 1) to such person, requiring him to be and appear at a time and place mentioned in the summons, before the said Justice, or any other Justice or Justices of the Peace for the Territorial Division, who may then be there, to testify what he knows concerning the information or complaint.

The Justice under this Act can issue his Summons to witnesses for the Informant, complainant or Defendant, whilst under the 32 & 33 Vic. c. 30 he can only summon witnesses for the prosecution, (*vide ante* p. 74); but the person so to be summoned must, by the oath or affirmation of the person whose deposition supports the application, be shewn to be within the jurisdiction, i. e. the Territorial Division, of the Justice to whom it is made; whilst under the 32 and 33 Vic. c. 30 he can summon any one within the limits of Canada (*vide ante* p. 74).

Warrant if such person fails to appear.

May be backed.

17. If any person so summoned neglects or refuses to appear at the time and place appointed by the Summons, and no just excuse be offered for such neglect or refusal, then (after proof upon oath or affirmation of the Summons having been served upon him, either personally or by leaving

the same for him with some person at his last or most usual place of abode) the Justice or Justices before whom such person should have appeared may issue a Warrant (G 2) to bring and have such person, at a time and place to be therein mentioned, before the Justice who issued the Summons, or before any other Justice or Justices of the Peace for the same Territorial Division who may be then there, to testify as aforesaid, and the said Warrant may, if necessary, be backed as hereinbefore mentioned, in order to its being executed out of the jurisdiction of the Justice who issued the same.

The service of a summons on a witness, should be made in the same manner as that of a summons to a defendant (*vide* s. 2 ante p. 152); the proof of such service should also be made in the same manner as that of summons to a Defendant (*vide* s. 6 ante p. 156).

If the Summons has been served and the Defendant makes default to appear, on proof of service, the Justice then present may issue his Warrant to apprehend such witness; and under that warrant the witness may be apprehended not only in the Territorial Division in which it issued, but if backed in any other Division in which the witness may be found.

(*Vide* s. 11 ante p. 23 and 32 and 33 Vic. c. 30 s. 23 p. 71 as to formalities of backing.)

Warrant in the first instance.

18. If the Justice is satisfied, by evidence upon oath or affirmation, that it is probable that the person will not attend to give evidence without being compelled so to do, then instead of issuing a Summons he may issue his Warrant (G 3) in

the first instance, and the warrant may if necessary, be backed as aforesaid.

Commitment for refusal to give evidence.

19. If on the appearance of the person so summoned before the last mentioned Justice or Justices, either in obedience to the Summons, or upon being brought before him or them, by virtue of the Warrant, such person refuses to be examined upon oath or affirmation concerning the premises, or refuses to take an oath or affirmation, or having taken the oath or affirmation refuses to answer such questions concerning the premises as are then put to him, without offering any just excuse for his refusal, any Justice of the Peace then present and having jurisdiction, may, by Warrant (G 4), commit the person so refusing to the Common Gaol or other prison for the Territorial Division where the person then is, there to remain and be imprisoned for any time not exceeding ten days, unless in the meantime, he consents to be examined and to answer concerning the premises.

Vide observations on 32 and 33 Vic. c. 30 s. 28 ante pp. 75, 76, 77.

Certain complaints need not be in writing, &c.

20. In all cases of complaint upon which a Justice or Justices of the Peace may make an order for the payment of money or otherwise, it shall not be necessary that such a complaint be in writing unless it be required to be so by some particular Act or Law upon which such complaint is framed.

Certain variances as to time and place, between information and evidence not material.

21. In all cases of informations for offences or acts punishable upon summary conviction, any variance between the information and the evidence adduced in support thereof as to the time at which such offence or act is alleged to have been committed, shall not be deemed material, if it be proved that such information was in fact laid within the time limited by law for laying the same ; and any variance between the information and the evidence adduced in support thereof, as to the place in which the offence or act is alleged to have been committed, shall not be deemed material, if the offence or act be proved to have been committed within the jurisdiction of the Justice or Justices by whom the information is heard and determined.

But if the Defendant has been misled, Justice may adjourn the case ; and on what conditions.

22. If any such variance, or any other variance between the information and evidence adduced in support thereof, appears to the Justice or Justices present, and acting at the hearing, to be such that the party charged by the information has been thereby deceived or misled, the Justice or Justices upon such terms as he or they think fit, may adjourn the hearing of the case to some future day, and in the meantime commit (D) the Defendant to the Common Goal, or other prison, or to

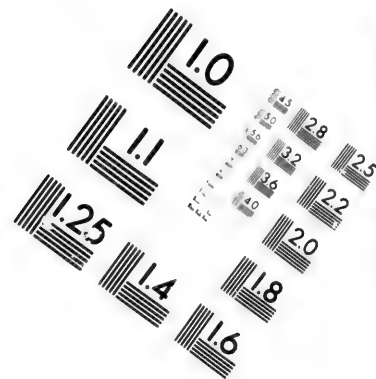
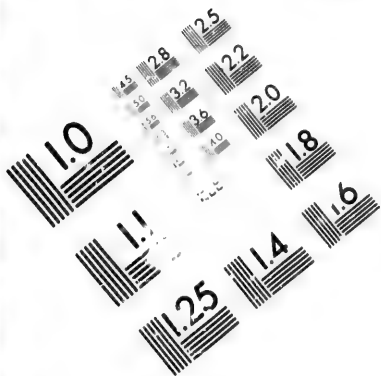
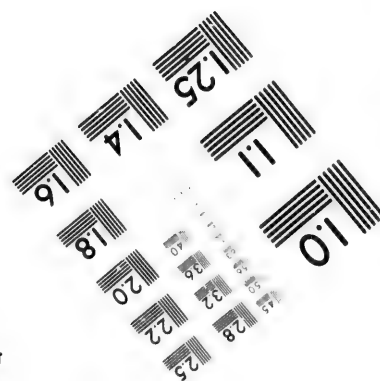
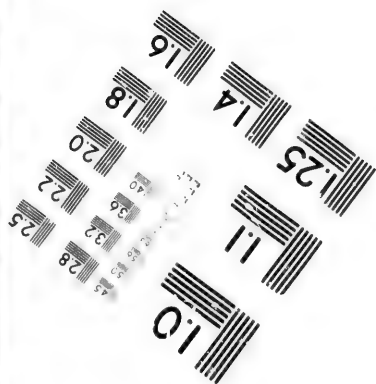
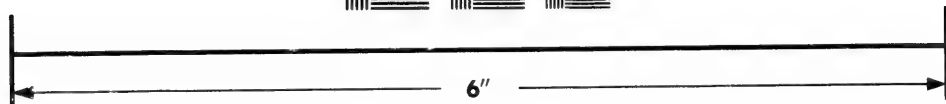
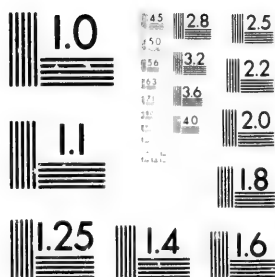


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such other custody as the Justice or Justices think fit, or may discharge him upon his entering into a Recognizance (E), with or without Surety or Sureties, at the discretion of the Justice or Justices, conditioned for his appearance at the time and place to which the hearing is adjourned.

Vide observations on s. 12 ante p. 162

Defendant bailed and not appearing at proper time.

23. In all cases where a Defendant has been discharged upon Recognizance as aforesaid, and does not afterwards appear at the time and place in the Recognizance mentioned, the Justice who took the Recognizance, or any other Justice or Justices who may then be there present, having certified (F) upon the back of the Recognizance the non-appearance of the Defendant, may transmit the Recognizance to the proper Officer in the Province appointed by law to receive the same, to be proceeded upon in like manner as other Recognizances, and the Certificate shall be deemed sufficient *prima facie* evidence of the non-appearance of the Defendant.

This section is not quite so full as s. 13. which see ante p. 162

Complaints, &c., need not be on oath, unless specially so provided.

24. All complaints upon which a Justice or Justices of the Peace are authorized by law to make an order, and all informations for any offence or act punishable upon summary conviction, unless

some particular Act or Law otherwise requires, and except in cases wherein it is herein otherwise provided, may respectively be made or laid without any oath or affirmation as to the truth thereof.

Vide s. 1 ante p. 148.

Except where warrant is issued in the first instance.

Complaint or information to be for one matter only : may be made by attorney.

25. But in all cases of informations, where the Justice or Justices receiving the same, thereupon issue his or their Warrant in the first instance, to apprehend the Defendant, and in every case where the Justice or Justices issue his or their Warrant in the first instance, the matter of the information shall be substantiated by the oath or affirmation of the informant, or by some witness or witness on his behalf, before the Warrant shall be issued ; and every complaint shall be for one matter of complaint only and not for two or more matters of complaint, and every information shall be for one offence only, and not for two or more offences, and every complaint or information may be laid or made by the complainant or informant in person, or by his Counsel or Attorney, or other person authorized in that behalf.

Vide s. 1 ante p. 148.

When no time is limited for information or complaint.

Exceptions as to part of County of Saguenay.

26. In all cases where no time is specially limited for making any complaint or laying any information in the Act or Law relating to the particu-

lar case, the complaint shall be made and the information shall be laid within three months from the time when the matter of the complaint or information arose, except in that part of the county of Saguenay which extends from Portneuf in the said county, to the eastward as far as the limits of Canada, including all the Islands adjoining thereto, where the time within which such complaint shall be made, or such information shall be laid, shall be extended to twelve months from the time when the matter of the complaint or information arose.

Vide s. 1 ante p. 146.

As to the hearing of complaints and information.

27. Every complaint and information shall be heard, tried, determined and adjudged by one Justice or two or more Justices of the Peace, as may be directed by the Act or Law upon which the complaint or information is framed, or by any other Act or Law in that behalf.

If there be no direction in the Act.

28. If there be no such direction in any Act or Law, then the complaint or information may be heard, tried, determined and adjudged by any one Justice for the Territorial Division where the matter of the complaint or information arose.

These sections refer merely to hearing and determining informations and complaints, as by s. 85, one Justice may receive the information and complaint, grant a summons or warrant thereon, and generally do all acts and matters neces-

sary preliminary to the hearing even in cases where, by the Statute in that behalf, the information or complaint must be heard and determined by two Justices; but it is conceived that where the Statute under which the information is laid or the complaint made, requires *expressly* that it shall be laid or made before two Justices s. 85 does not apply. (R. vs. Griffin 9. Q. B. 155; R. vs. Russell 13 Q. B. 237).

It is also to be remembered, that it is not necessary that the Justice who acts before the hearing should be the Justice, or one of the Justices, by whom the case is to be determined. (s. 87 post).

It is proper here to mention that though all the Justices of each Division are equal in authority, it would be contrary to the public interest, as well as indecent, that there should be a contest between different Justices. It is therefore agreed that the jurisdiction in any particular case attaches in the first set of magistrates, duly authorized who have possession and cognizance of the fact, to the exclusion of the separate jurisdiction of all others. So that the acts of any other, except in conjunction with the first, are not only void, but such a breach of the law as subjects him to indictment. (R. vs. Sainsbury 4. T. R. 456; R. vs Great Marlow 2 East, 244; Paley p. 40).

Wherever the concurrence of two Justices is requisite for any judicial act, they must be present and acting together during the whole of the hearing and determination of the case, (Paley p. 31 and note (z)).

In the event of the case being heard before two Justices and of their being divided in opinion, they cannot call in a third Justice, submit the notes of the evidence to him, and thereupon with him determine the case, he being a party to the conviction or order as one of the Justices having heard the case.

To be deemed an open Court.

29. The room or place in which the Justice or Justices sit to hear and try any complaint or information shall be deemed an open and public Court to which the public generally may have access, so far as the same can conveniently contain them.

Defendant may make full defence, and produce witnesses.

30. The party against whom the complaint is made or information laid, shall be admitted to make his full answer and defence thereto, and to have the witnesses examined and cross-examined by Counsel or Attorney on his behalf.

Prosecutor may be heard by Counsel or Attorney.

31. Every Complainant or Informant in any such case shall be at liberty to conduct the complaint or information, and to have the witnesses examined and cross-examined by Counsel or Attorney on his behalf.

Vide s. 6 ante p. 157.

In case the Defendant does not appear.

Proceeding ex parte, or warrant and adjournment.

32. If on the day and at the place appointed by the summons for hearing and determining the complaint or information, the Defendant against whom the same has been made or laid does not appear when called, the Constable, or other person who served him with the summons, shall declare upon oath in what manner he served the summons; and if it appear to the satisfaction of the Justice or Justices that he duly served the sum-

mons, then the Justice or Justices may proceed to hear and determine the case in the absence of the Defendant, or the Justice or Justices, upon the non-appearance of the Defendant, may, if he or they think fit, issue his or their warrant in the manner hereinbefore directed, and shall adjourn the hearing of the complaint or information until the Defendant is apprehended. See 47

If the Justice thinks fit in lieu of issuing his warrant under s. 6 *ante* p. 156 he may on the service of the summons being proved as there pointed out proceed to hear and determine the case in the absence of the Defendant *ex parte*.

When Defendant has been apprehended, &c.

Proviso.

33. When the Defendant has been apprehended under the warrant, he shall be brought before the same Justice or Justices, or some other Justice or Justices of the Peace, for the same Territorial Division, who shall thereupon, either by his or their warrant (H) commit the Defendant to the Common Goal, or other prison, or if he or they think fit, verbally to the custody of the Constable or other person who apprehended him, or to such other safe custody as he or they deem fit, and may order the Defendant to be brought up at a certain time and place before him or them, of which order the Complainant or Informant shall have due notice, but no committal under this section shall be for more than one week.

The power of verbal commitment for a week granted to the Justice under this section is not to be found in the

English Statute nor in that of the heretofore Province of Canada. Under the 32 and 33 Vic. c. 30 s. 42 the Justice can commit verbally on remand but for a period of three days, and no valid reason can be assigned for giving Justices greater powers in summary cases than in indictable offences. The case ceases to be summary when ere conviction, at the will of a Justice, a man may be committed, to any safe custody the Justice may deem fit, for a week.

If Defendant appears, &c., and the complainant does not, discharge, or adjournment on recognizance.

34. If upon the day and at the place so appointed, the Defendant appears voluntarily in obedience to the summons in that behalf served upon him, or is brought before the Justice or Justices by virtue of a warrant, then, if the Complainant or Informant, having had due notice, does not appear by himself, his Counsel or Attorney, the Justice or Justices may commit (1) the Defendant in the meantime to the Common Gaol, or other prison, or to such other custody as he or they think fit, or may discharge him upon his entering into a recognizance (E) with or without surety or sureties, at the discretion of the Justice or Justices, conditioned for his appearance at the time and place to which such hearing may be adjourned.

Due notice of the time and place fixed by the Justice for the bringing up the Defendant by him committed under s. 33 should be given to the Complainant or Informant.

If Defendant afterwards fails to appear, &c.

35. If the Defendant does not afterwards appear at the time and place mentioned in his Recogni-

zance, then the Justice who took the Recognizance, or any Justice or Justices then and there present, having certified (F) on the back of the recognizance the non-appearance of the Defendant may transmit the recognizance to the proper officer appointed to receive the same, to be proceeded upon in like manner as other recognizances, and such certificate shall be deemed sufficient *prima facie* evidence of the non-appearance of the Defendant.

Vide s. 13 ante p. 163.

If both parties appear.

36. If both parties appear, either personally or by their respective Counsel or Attorneys, before the Justice or Justices who are to hear and determine the complaint or information, then the said Justice or Justices shall proceed to hear and determine the same.

Proceeding on the hearing.

37. In case the Defendant be present at the hearing, the substance of the information or complaint shall be stated to him, and he shall be asked if he has any cause to shew why he should not be convicted, or why an order should not be made against him, as the case may be.

Justice may convict, &c., if Defendant admits the truth.

38. If he thereupon admits the truth of the information or complaint, and shews no sufficient cause why he should not be convicted, or why an order should not be made against him, as the case

may be, the Justice or Justices present at the hearing, shall convict him or make an order against him accordingly.

If he does not admit the truth, &c., examination of witnesses, &c.

39. If he does not admit the truth of the information or complaint, the Justice or Justices shall proceed to hear the Prosecutor or Complainant and such witnesses as he may examine, and such other evidence as he may adduce in support of his information or complaint, and shall also hear the Defendant and such witnesses as he may examine, and such other evidence as he may adduce in his defence, and also hear such witnesses as the Prosecutor or Complainant may examine in reply, if such Defendant has examined any witnesses or given any evidence other than as to his (the Defendant's) general character.

As to observations by either party.

40. The Prosecutor or Complainant shall not be entitled to make any observations in reply, upon the evidence given by the Defendant, nor shall the Defendant be entitled to make any observations in reply upon the evidence given by the Prosecutor or Complainant in reply.

Decision of the case.

41. The Justice or Justices, having heard what each party has to say, and the witnesses and evidence adduced, shall consider the whole matter and, unless otherwise provided, determine the

same, and convict or make an Order upon the Defendant, or dismiss the information or complaint as the case may be.

As the above sections contain the general rules concerning the hearing and determining summary cases under this Statute, it is expedient to draw attention, whilst considering their provisions, to the other sections of the Statute which bear upon the proceedings during the hearing.

Care must be taken in the first place that where the Statute under which the proceeding is taken requires that the case should be heard before two or more Justices, that the requisite number of Justices be actually present and take part in the hearing. If, however, there be no such requirement in the Statute, one Justice can hear the case. (s. 27 and 28, ante pp. 172, 173).

On the Justice taking his seat, the case should be called, and the Prosecutor or Complainant and the Defendant should also be called; in the event of both parties, either personally or by Counsel or Attorney, appearing, the Justice or his Clerk should read the information or complaint over to the Defendant or to his Counsel or Attorney in his absence; and then ask him or his Counsel in his absence, whether he admits the charge or complaint, in other words whether he is guilty or not guilty. If the Defendant pleads guilty to the charge, or admits the truth of the complaint, there is no necessity for any other proof and the Defendant may then and there be convicted, or the proper order may be made upon him; but in all cases where the Defendant is without legal assistance the Justice, ere receiving the plea of guilty, should explain to the Defendant the legal definition and quality of the offence, lest from ignorance or misapprehension he may be induced to plead guilty to a charge, with the legal merits of which he may be totally unacquainted

The Defendant may perhaps have objections going either to the form or substance of the information or complaint, in such case they should be made immediately on his being asked if he admits the truth of the charge. If he pleads to the merits, his objections are considered waived. As already mentioned in the observations on s. 5 ante p. 154 no great favor is shewn to technicalities, in ordinary cases all that he can obtain by his objections being delay. (*vide* s. 5 *supra*).

Adjournment.

If the Defendant pleads not guilty or denies the truth of the complaint, his plea should be entered by the Justice in his minutes; the case being then ready for the examination of witnesses, the Informant or Complainant should proceed with his proof, but if either of the parties be not ready to proceed through the default of witnesses, or from being unable to procure documentary evidence essential to the maintainance of his case, or from any other good reason, the Justice, upon satisfactory proof of such fact, and of diligence of the party making the application, should adjourn the hearing to some other day, the certain time and place being there and there appointed and stated in the presence and hearing of the parties, or of their respective Attorneys or Agents then present, and in the meantime the Justice may suffer the Defendant to go at large or may commit him or discharge him upon his recognizance with or without sureties (*Vide* s. 46 post).

If both parties are ready to proceed, the Informant or Complainant states his case to the Justice, calls his witnesses and makes his proof in the way he deems most conducive to the elucidation of the facts. If he be a witness himself, he should not be permitted to address the Justice except upon

oath, and then strictly to the facts; and this will apply even to his Attorney, who, if he be also a witness, ought not to be permitted to address the Justice otherwise than upon oath as a witness (*Stones vs. Byron* 16 L. J. Q. B. 32; *Dunn vs. Penkwood* 1 Bail Court Rep. 312; *Rex vs. Price* 2 B. and Ald. 606).

For the mode of administering the oath to the witnesses, who must all be sworn, or must affirm, to the truth of what they are to say *vide ante* pp. 19, 20, 21, 22. As to the rules governing examination in chief, cross-examination and re-examination, *vide ante* pp. 22-25.

The Justice can, on application of either of the parties, ere the examination of the witnesses is commenced, order the witnesses on both sides out of Court, so that they may not hear the evidence as it is given. Medical witnesses and the Attorneys of the parties are however always excepted from the operation of the order. Should any of the witnesses in defiance of the order remain in, or return to the Court whilst the evidence is being taken, the Justice has no right to exclude their testimony, though such conduct will naturally weaken the strength of their evidence. (*Cook vs. Nethereote* 6 C. & P. 741; *Chandler vs. Horn* 2 Mo. & Rob. 423).

It is to be remembered that, the Justice or his Clerk should carefully take down the whole of the evidence, so far as it has any relevancy to the issue joined between the parties.

On the conclusion of the Informant's or Complainant's evidence, the Justice will decide if a *prima facie* case has been established; if he comes to the conclusion that no such case has been established, he will at once dismiss the information or complaint without calling upon the Defendant for his defence. If on the contrary, he is of opinion that such a

case has been established, he will then proceed to hear the Defendant, who, as before seen, has a right to address the Justice, either in person or by his Counsel or Attorney. Having so addressed the Justice and commented upon the insufficiency of the case for the Informant or Complainant, or made known his line of defence to be established by his witnesses, he will call his witnesses and establish his defence in as perfect a manner as he can, and precisely the same rules will apply to the course of proceeding relative to his evidence as to that of the Informant or Complainant. The Informant or Complainant may adduce evidence in reply to that adduced by the Defendant, but he cannot prove again the same facts as those established or attempted to be established by him on the opening of his case. (Taylor on Ev. *vide* on the subject of examination ante pp. 22-25).

Should any of the witnesses refuse to be sworn or examined or to answer legal questions put to them, ample powers are given by s. 19 to the Justice to reduce them to obedience. When a witness so refuses and is committed the case should be adjourned.

If on the hearing, the Justice perceives that there is on the part of the Defendant a bonâ fide assertion of a claim of right, or of property, or title, (for a definition of which see ante p. 12) the Justice should dismiss the case, leaving the complaining party to such other recourse as the law may have provided (Saunders p. 70. Paley 5 Ed. p. 137; Oke's Syn. p. 34).

In all cases in which the public are not involved it is possible for the parties to compromise, but it is clear that if the offence is of a public nature no agreement can be valid that is framed on the consideration of stifling a prosecution for it. But common assaults, disputes between master and

servant, trespasses and the like, in which the mischief is confined to the Complainant and does not involve the interests of the public or compromise the public peace, may lawfully be compromised. Riots, assaults upon Officers in the execution of their duty cannot (Keir vs. Leeman 6. Q. B. 308; 9 Q. B. 577; Saunders 77; Paley 5 Ed. 47; Oke's Syn. 140). The proper mode of disposing of the case in the event of a compromise being effected ere the Informant has established his case, is an order of a dismissal, if on the contrary he has proved the allegations of his information the Defendant should be convicted in a small penalty in either case with or without costs as may be determined by the parties (*Vide* Oke's Syn. 140 and Saunders 79 for variety of opinion on this point).

The Informant or Complainant and the Defendant can not make any observations in reply, their right to address the Justice exists only at the opening of their respective cases.

The general rule is that if the charge is substantiated and no valid defence proved, the duty of the Justice is to convict, whilst if the case for the prosecution fail, or a valid defence is shewn, it becomes his duty to dismiss the charge. Certain exceptional provisions are however sometimes contained in the Statute relating to the offence. Thus 32 and 33 Vic. c. 20 s. 44 provides that on certain charges of assault, the Justice may, in the event of his finding the assault or battery to have been justified, or so trifling as not to merit any punishment, dismiss the complaint. But in all other cases, save those in which such exception exists in the Statute relative to the offence, the general rule applies, and where no reasonable doubt exists in the mind of the Justice, after hearing the evidence on both sides, of the guilt of the Defendant, there should be a conviction or an order; if on the

contrary such reasonable doubt exists, the Defendant should have the benefit and the information or complaint be dismissed.

Justices should not supply any deficiency in the proof of either the Prosecutor or Defendant by their personal knowledge of the facts of the case, their duty is to determine on the evidence given before them.

Minute of conviction to be made.

42. If he or they convict or make an order against the Defendant, a minute or memorandum thereof shall then be made, for which no fee shall be paid, and the conviction (I 1, 2, 3) or order (K 1, 2, 3) shall afterwards be drawn up by the Justice or Justices in proper form, under his or their hand and seal or hands and seals.

THE CONVICTION.

Previous to the passing in England of the Statute 11 and 12 Vic. c. 43, the drawing up of a conviction, save in those cases where by special statute a short form was given, presented many points of difficulty to Justices of the Peace.

The general form previously in use under 3. Geo. 4. c. 23 consisted of the following parts: 1st The information, 2nd The summons and appearance or default of the Defendant, with his confession or denial and defence, 3rd The evidence, 4th The adjudication.

The conviction therefore under that Statute was in the nature of a Record of all the proceedings in the case; under the 11 and 12 Vict. c. 43, the necessity for setting out the information, the summons and appearance, or default of the Defendant with his confession or denial and defence and the evidence is done away with, and in lieu thereof a short form more in the nature of a judgment, is given, the blanks of

which are to be filled up so as to meet the facts of each individual case.

Previous to Confederation the English Act 11 and 12 Vic. c. 43. had with very slight alterations, been adopted by the Parliament of Canada, and had passed into law by virtue of 14 and 15 Vic. c. 95, afterwards forming a portion of Cap. 103 Consolidated Statutes of Canada.

Requisites of information. Accuracy in stating the offence. Forms applicable to previous Statutes. Particular form by subsequent Statutes.

In the use of the forms of conviction given by the 32 and 33 Vic. c. 31 it must be remembered, that though doubtless the task imposed upon Justices of the Peace of drawing up convictions is much easier of performance now-a-days than it was forty years ago, yet 1^o that the same accuracy is required in the stating an offence in the conviction, now as then, the only change being that formerly the accuracy in that part of the conviction wherein the information was set out was required, whilst now-a-days it is required in what then would have been called the adjudication. 2^o The forms given by the 32 and 33 Vict. c. 31, are applicable to all previous penal Statutes, whether they contain particular forms of convictions or orders or not, and to all subsequent Statutes not containing particular forms of convictions or orders, (*Exparte Allison* 10 Exch. 551; 24 L. T. 117). 3^o if by any subsequent statute a particular form be prescribed as indispensably necessary, such provision must be strictly complied with (*R. vs. Jeffries* 4 T. R. 169). Any defect in the manner of setting out that which in itself is surplusage, and which might be omitted altogether, does not vitiate the rest which is sound (*R. vs. Hall* 1 T. R. 320; *R. vs. Drake* 2 Show. 489). An impossible or incongruous date, if the con-

viction be complete without it, may be rejected as surplusage (R. vs. Crisp 7 East 389).

Mode to be adopted in filling up blanks in form of conviction.

The blanks of the form of a conviction for a penalty and costs to be levied by distress, and in default of sufficient distress by imprisonment, are to be filled up as follows :

1^o The names of the Province and Territorial Division within which the conviction was rendered.

2^o The date of the conviction giving the day, month, and year in full, without using figures.

3^o The place where the conviction was so rendered, showing also the Territorial Division within which the said place is situate.

4^o The name, residence, and occupation of each of the Defendants.

5^o The number of the Justices convicting.

6^o The statement of the offence; this is the most difficult portion of the conviction to draw, and great attention must be paid to the following points :

(a). *The time and place of the commission of the offence.*

The precise day need not be given, it is sufficiently certain if the fact be alleged to have happened between such a day and such a day, provided both the days specified be within the time limited by statute for bringing the information (Paley on Con. p. 155, he saying that it is only necessary that the last of the days specified be within the limited time; R. vs. Chandler 1 Salk 378).

It is however more regular and safer, when practicable, to fix the charge to a day certain (Paley p. 156; Hutton on Con. p. 22; R. vs. Crop 7. East. 389; R. vs. Huggins 3 C. & P. 602; R. vs. Simpson 10 Mod. 248; Saunder's prac. 14).

As the conviction must expressly shew that the Justice had jurisdiction over the offence, it must be clearly and distinctly stated that it was committed within the Territorial Division, over which the convicting Justice had jurisdiction (*R. vs. Austen* 8 Mod. 209; *R. vs. Hazell* 13 East 139; *In re Peerless* 1 Q. B. 143). Where a place has been once mentioned, as B. in the District of M. it will be sufficient to allege the offence to have been committed at B. aforesaid. (*R. vs. Burnaby* Ld. Raym. 901).

Where by a special statute, jurisdiction is given to Justices of the Territorial Division within which an offender is found, the offence having been by him committed in another Territorial Division, in addition to setting out the place where the offence is committed, it is necessary to set out the fact of his having been found at some place within the Territorial Division of the convicting Justice (*Re Peerless* 1 Q. B. 143).

No presumption from the manner of describing the facts, can supply the omission of a direct averment of their having occurred within the jurisdiction of the convicting Justice (*R. vs. Edwards* 1 East 279; *Paley* p. 159; *Hutton* p. 24; *R. vs. Chandler* 14 East 274).

(b)—*Acts committed, certainty of description, guilty knowledge.*

The description of the offence must include in express terms, every ingredient required by the Statute to constitute the offence, nothing being left to intendment, inference, or argument. (*R. vs. Turner* 4 B. & Ald. 510; *R. vs. Duncan* 1 Ch. R. 152; *R. vs. Jukes* 8 T. R. 536; *R. vs. Trelawny* 1 T. R. 222; *R. vs. Pereire* 2 Ad. & E. 375; *Charler vs. Greene & al.* 13 Q. B. 216; *R. vs. Saddler* 2 Chit. R. 519; *R. vs. Moore* Ld. Raym. 791).

The facts constituting the offence must be stated in a direct and positive manner, the offence cannot be charged disjunctively or in the alternative (R. vs. North 6 D. & R. 143; Paley p. 140; Storker case 1 Salk. 342; R. vs. Pain 5 B. & C. 251; A. G. vs. Shirley 1 Y. & J. 221; Hulton p. 38; R. vs. Middlehurst 1 Burr. 399).

Where knowledge is made a material component in the offence it must be distinctly alleged (R. vs. Jukes 8 T. R. 536; R. v. Llewellyn 1 Show, 48; R. vs. Marsh 2 B. & C. 717; Chaney vs. Payne 2 Q. B. 712; *ex parte* Hawkins 2 B. & C. 31). When the statute under which the information is laid, in describing the offence contains the words maliciously, wilfully, knowingly, or words of similar import, the defendant should be stated in the description of the offence, to have committed it maliciously, &c., as the case may be. (Paley, p. 143).

It is not sufficient to state as the offence, that which is only the legal result of certain facts; but the facts themselves must be specified, that the Court may judge when they amount in law to the offence (Paley 174; Saunders page 16; R. vs. Sparling Str. 497; R. vs. Daman 1 Chit. Rep. 147; R. vs. Rowed 3 Q. B. 180; R. vs. Popplewell 1 Str. 683; R. vs. Chaveney 2 Ld. Raym. 1368; R. vs. Jarvis 1 Bur. 154, Hulton, p. 34; R. vs. Cheere 7 D. & R. 461; R. vs. How, 2 Str. 699; R. vs. Nield 6 East 417).

In general when it is perfectly immaterial by what means the particular prohibited act has been effected, it will be sufficient to describe the offence in the precise words of the statute creating it (R. vs. Speed 1 Ld. Raym. 583; R. vs. Fuller East P. C. 92; *Ex parte* Perham 29 L. J. (M.L.) 31).

But on the other hand, when circumstances explanatory of the words of the statute are necessary to be shown, in order

to bring the case within the statute, such circumstances must be plainly and distinctly averred (R. vs. Jervis 1 East 643 n; R. vs. Nield 6 East 417; R. vs. Ridgway 5 B. & Ald. 527; Fletcher vs. Calthrop 6 Q. B., 880; *Ex parte* Perham 29 L. J. (M. C.) 31; Paley 176, R. James Caird, 458).

When words constitute the offence complained of, the older cases require that the words themselves must be set out; thus where a conviction under the 7 W. 3 c. 11. stated that the defendant did profanely swear fifty oaths, and profanely swear one hundred and sixty curses, it was held bad, for not setting out the oaths and curses, that the Court might see whether they were oaths and curses or not (R. vs. Sparling Str. 497). The same principle was maintained in the case of R. vs. How Str. 699. Where an indictment charged that the defendant did unlawfully, and with threats and menaces, prevent and hinder the burial of a corpse, it was held bad as it did not state what the threats and menaces were, as it might be that the threats were not illegal; because if a stranger attempted to bury a corpse, a threat of spiritual prosecution would not be illegal (R. vs. Cheere 7 D. & R. 461). (a)

(c)—*Character of Parties*.—Where an offence can only be committed by a person filling a particular situation, it must be distinctly alleged, that a party charged with having committed the offence filled that situation (*ex parte* Hawkins 2 B. & C. 31). So when a penalty is affixed on persons filling one character, and a higher penalty on persons filling another character who have been guilty of an offence, it

(a) But it would seem that Courts at the present day where the offence is described in the words of the statute would not require the particular threats to be set out. (Ln. re Perham 5, H. & N. 30, 2 E. & E. 383; Spelman vs. The Queen in error—Q. B. Montreal, 1868, Mss. note W. H. K.)

must be distinctly alleged to which of the different classes the defendant belongs (R. vs. Sparling 1 Str. 397). All the terms imposed by the statute, as to the character of the person charged, must be strictly averred (R. vs. Little 1 Burr. 613; R. vs. Taylor 7 D. & R. 623; R. vs. Brown 8 T. R. 26). And where the offence can only be committed when other persons, filling a particular character are concerned, it must be alleged that those persons filled that character at the time (R. vs. Dove 3 B. & Ald. 596). Where the offence consists in causing or endeavouring to cause any person filling a particular situation to violate his duty, it must be distinctly alleged that the person filled such situation at the time, and that it was his duty to do that which the defendant prevented or endeavoured to prevent his doing (R. vs. Everett 8 B. & C. 115).

(d)—*Sums and Quantities*.—When the question turns upon sums and quantities, they must be particularized (R. vs. Van Heubeck 2 Lew. 38; R. vs. Catherall Str. 897; R. vs. Marshall 2 Keble 594; R. vs. Gibbs Str. 49): especially in those cases, in which the justices are empowered to award compensation according to the amount of damage (R. vs. Gibbs 1 Str. 497; R. vs. Burnaby 2 Ld. Baym. 900).

(e)—*Written Instruments*.—Where written instruments form the gist of the offence, the conviction must set them out, that it may clearly appear that the instrument is one of the description contemplated by the statute (R. vs. Lloyd 2 East P. C. 1123; R. vs. Burrough 1 Ventr. 305; R. vs. Powell 2 East P. C. 976). In some cases it will be sufficiently certain if the writing be set out according to the tenor following; but if it be to the effect following it will be bad, because those words do not import that the language

stated was the specific language used in the writing (*R. vs. Beare*, *Ld. Raym.* 414).

(f)—*Ownership Partners*.—When it becomes necessary to state the ownership of any article belonging to partners, joint tenants, partners, or tenants in common, it is sufficient to state that the property belongs to one of the said partners, naming him, and another or others as the case may be, and whenever it becomes necessary to state the ownership of any work or building, made, maintained, or repaired, at the expense of any Territorial division or place, or of any materials for the making, altering, or repairing the same, they may be therein described as the property of the inhabitants of such Territorial division or place; if belonging to a Corporation or Municipality, care should be taken that the proper corporate name of such Corporation or Municipality be given. (*vide s. 14*).

(g)—*Exceptions and Provisos Negating*.—All circumstances of exemption and modification, whether applying to the offence or to the person, that are either originally introduced into, or incorporated by reference with, the enacting clause must be distinctly enumerated and negatived; and it is immaterial whether the said circumstances of exemption and modification be in another section, or in another act of Parliament, if distinctly referred to and engrafted into the enacting clause; but such matters of excuse as are given by provisos, or other distinct clauses not referred to and engrafted into the enacting clause, need not be specifically set out or negatived (*Paley*, pp. 193, 194; *R. vs. Jukes* 8, *T. R.* 542; *R. vs. Bell*, *Fost Cr. L.* 439; *Speeres vs. Parker* 1, *T. R.* 141; *Gill vs. Scrivens* 7, *T. R.* 27; *R. vs. Hawkins* 2, *B. & C.* 31; *R. vs. Palmer* 1, *Leach* 120; *R. vs. Pratten* 6, *T. R.* 559; *R. vs. Earnshaw* 15,

East 456; R. vs. Clarke Cowp 35; R. vs. Hall 1, T. R. 320; R. vs. Neville 1, B. & Ad. 489; R. vs. Bryan Str. 101; R. vs. Ford Str. 55; (Saunders 16, 17, Okes. Syn. 118.) A general allegation that defendant is not qualified is insufficient (R. vs. Jarvis 1, Burr. 148; R. vs. Marriott 1, Str. 66), but yet in some cases where the words of the statute have been followed, a general denial of such exemption has been held sufficient. (Cook vs. Swift 14, M. & W. 235 vide Paley 204-211, Hutton 28-32, Saunders 16-17). It has however been held in some cases, that where the offence charged is of such a nature that its existence depends upon the act complained of being done without any legal excuse, it must be alleged that such act was done without such legal excuse, although no such condition, or qualification is referred to in the statute (*In re Turner* 15, L. J. 140, M. C.; R. vs. Askew 20, L. J. (N. S.) M. C. 241; Re. Geswood 2, E. & B. 952).

7^o *The Adjudication, &c.*—Immediately after the statement of the offence in form I. 1, comes the adjudication of punishment, being the penalty and compensation, if any, adjudged and ordered by the justice to be forfeited and paid by the defendant.

By certain statutes the amount of the penalty is fixed, in others the justices have the right, within certain limits, of fixing the amounts of the penalty and compensation, if any, which must appear in the adjudication.

In the adjudication, the justice must measure the penalty he inflicts, by his authority under the statute inflicting the penalty for the offence of which he convicts the defendant. If the penalty is a sum certain, the defendant should be adjudged to forfeit and pay that sum certain.

If on the other hand the statute in such cases gives the

Justice the power of inflicting a penalty of not more, for instance, than five pounds, and not less than one pound, the Justice, if he convicts, must impose a penalty of either of those sums, or of any sum between them. But if he imposes a penalty either greater than the higher or less than the lower limit, the conviction is bad (*R. vs. Patchett*, 5 East 341 *R. vs. Salomons*, 1 T. R. 249). In all cases the clause of the statute fixing the penalty should be carefully and strictly pursued. (*Okes. Syn.* 146.)

Conviction for one offence only.—By the 25th clause of the statute now under consideration, it is enacted, that every complaint shall be for one matter of complaint only, and not for two or more matters of complaint, and every information shall be for one offence only, and not for two or more offences.

The enactment with reference to the information, controls the conviction which must in all cases, save where the contrary is provided by a subsequent statute, be for one offence; it becomes necessary then to consider what acts, in the eye of the law, constitute but one offence.

Where several acts are charged to have been committed, it depends upon the construction of the statute applicable to such acts, whether they in fact form but one offence, for which one penalty alone can be imposed, or whether each act is an offence by itself punishable in a penalty.

If distinct and complete acts are committed on different days, such as killing one head of game on each day, it is clear that the killing on each day is an offence subject to a penalty; but the difficulty arises upon a repetition of similar acts, in pursuance of one object on the same day. With regard to cases of this description no general rule can be laid down, but the law in each case must be determined by the nature of the offence, and the manner in which the particular statute

applicable to it is worded. The 29 Car. 2, c. 7, made any workman exercising any work of his ordinary calling on the Lord's Day, liable to a penalty of five pounds; but in a prosecution instituted thereunder, it was held that a baker was only liable to one penalty for selling three loaves, though the sales were distinct, and Lord Mansfield then made use of the following words: "On the construction of the Act of Parliament the offender is exercising his ordinary trade on the Lord's Day, and that without any fraction of a day, hours, or minutes. It is but one entire offence, whether longer or shorter in point of duration, or whether it consists of one or a number of particular acts. There can be but one and entire offence on one and the same day."

Repeated offences are not the object which the legislature had in view in making the statute, but singly to punish a man for exercising his ordinary trade on a Sunday (*Cripps vs. Durden*, Cowp. 640).

But where 12 Geo. 2, c. 36, made it unlawful for "Any person to bring into this kingdom for sale, any book or books, first composed and printed, and published in this kingdom, and reprinted in any other country," and declares "that if any person shall import, or shall sell, publish or expose to sale any such book, knowing them to have been so reprinted, every such offender beside forfeiting the said book or books, shall forfeit the sum of five pounds, and double the value of every book which he shall so knowingly sell." In an action for penalties under this Act, it was held that two penalties were recoverable for selling two books on the same day, provided the sales were distinct (*Brook q. t., vs. Milligan* 3, T. R. 509).

In all cases then, the wording of the statute is to be carefully considered, in order to determine whether distinct

penalties are incurred for each of several acts charged, or whether they form but one aggregate offence, and require but one penalty (*vide* R. vs. Mathews 10 Mod. 27; Collins vs. Hopwood 15 M. & W. 459; Paley 218-221, Hutton, p. 41).

Several offenders—Though several offenders may be included in one conviction for an offence jointly committed, it depends upon the wording of the particular statute applicable, and the quality of the offence, whether each person is liable to a distinct penalty, or all collectively to but one.

The words of the section 4, of 5 Anne, c. 14, are as follows:—

“If any person or persons not qualified, &c., shall keep or use greyhounds, setting dogs, hayes, lurchers, tunnels, or any other engines to kill and destroy the game, and shall thereof be convicted, &c., the person or persons so convicted shall forfeit the sum of £5.” On a prosecution under the said clause, it was held that two persons could not be convicted in separate penalties for using a greyhound on the same occasion together (R. vs. Bleasdale 4 T. R. 809; *vide* also analogous cases of Hardyman vs. Whittaker 2 East 573; Partridge vs. Naylor, Croke, Eliz. 480; Barnard vs. Gosling 2 East 569).

Lord Mansfield in the case of R. vs. Clark & al, Cowp. 610, wherein a verdict had been obtained against three defendants for £40 each, in giving judgment on the rule to show cause why the judgment should not be arrested, on the ground that the offence of assaulting and resisting Custom House officers in the execution of their duty, and rescuing goods which had been seized, was, no matter how many persons took part in such resistance, an entire offence, for which but one penalty could be inflicted; the statute

providing that if any person or persons shall assault, &c., the party or parties shall for every such offence forfeit £40, said, there is no cause of greater ambiguity than arguing from cases without distinguishing accurately the grounds upon which they are determined. The true reason of the cases which have been cited in support of the motion and the distinction between these cases and the present is this, when the offence is in its nature single and cannot be severed, there the penalty shall be only single, because though several persons may join in committing it, still it constitutes but one offence; but where the offence is in its nature several, and where every person concerned may be separately guilty of it, there each offender is separately liable to the penalty; because the crime of each is distinct from the offence of the other and each is punishable for his own crime. If partridges are netted by night, two, three or more may draw the net, but still it constitutes but one offence.^(a) But this statute relates to an offence in its nature several, it is a several offence at common law, and the statute adds a further sanction against that which each man must commit severally. One may resist, another molest, another run away with the goods; all these are distinct acts, and every one's offence entire and complete in its nature, therefore each person is liable to a penalty for his separate offence (*vide* R. vs. Bleasdale 4 T. R. 809; R. vs. Hare & al, 5 T. R. 542; R. vs. Deace 12 M. & W. 39; R. vs. King 1 Salk 182; R. vs. Drake 2 Show 489).

But whether the offence is in its nature single or joint, a

(a) (Qy. *vide* Lord Campbell's observations in *expte. Smith & Till*, to this effect: "Poachers now use nets a mile long, which require a hundred men to set them. Would such a case as that amount only to one offence," 22, J. P. 383).

joint award of one fine against several defendants is erroneous; for it ought to be several against each defendant, otherwise one who had paid his fine might be continued in prison till all the others had paid theirs, which would be in effect to punish him for the offence of another. (Paley 224; Morgan vs. Brown 5 A. & E. 515; Saunders p. 74-75).

But of late years the distinction formerly recognized as existing between joint, and several offence has been done away with, and Courts treat all persons committing an offence together as liable each to the full penalty imposed by the statute on the person committing such offence, so that in all such cases it is the better plan to have an information and summary case for each person charged. (R. vs. Justices of Staffordshire 32 L. J. 105; Mayhew vs. Wardley 14 C. B. (N.S.) 550; Oke's Syn. p. 112 (N. p. 33 & 151.) The same care should be taken with respect to the compensation awarded as with respect to the penalty; the clause of the statute on which it is founded should be consulted, and the same attention paid to its provisions as in the case of the penalty.

The prosecutor being entitled to his costs of prosecution the defendant should be adjudged to pay him by name the amount of the costs which to the Justice convicting seems reasonable, the same not being inconsistent with the fees established by law in such case, the amount of the said costs being specified in the said conviction.

In all cases where no particular mode of raising or levying the penalty compensation, or sum of money by the act or law creating, or having reference to the offence is provided, and in all cases where by the act or law authorising the conviction it is provided that the penalty, compensation, or sum of money is to be levied upon the goods and chattels of the

defendant by distress, and the sale thereof, the justice must in his conviction order that, in default of immediate payment of the several sums mentioned in his conviction, including costs, or within a certain delay to be therein named as in the form (I 1) the said several sums shall be levied by distress and sale of defendant's goods and chattels, and in default of sufficient distress that the defendant be imprisoned in the common gaol of the Territorial Division within which the conviction was made (if the statute on which the conviction is founded requires that he should be kept at hard labor, he should be condemned to such hard labor), for and during such time as is provided by the act or law on which the conviction is founded.

Term of Imprisonment.—Care should be taken as in the case of the penalty, that the imprisonment awarded be not longer or shorter than that awarded by the statute to the person committing the offence charged. (*Ante* p. 192.) (b)

Statute creating the offence, if no provision for levying the penalty. *Vide* s. 57, Post p. 207.

Statute creating the offence, providing imprisonment in default of payment of penalty, &c. *Vide* s. 50, Post p. 204.

Date and Signature.—The place where the conviction was rendered should be specified as being in the Territorial Division for which the Justice was appointed, and the Justice should at the foot of the conviction sign his name, and affix his seal. If two or more Justices render the conviction, the closing should be under "our hands and seals, &c.," and it should be signed and sealed by each of the Justices convicting.

(b) If the act or law on which the information or complaint is founded does not specify any term of imprisonment, the Justice shall order him to be imprisoned for any period, not exceeding three months. (*Vide* sec. 62, Post p. 211.)

Variations from this general form of conviction must be made:

1. When under s. 59, the Justice deems fit, instead of issuing a warrant of distress, to commit the defendant, the portion of the conviction ordering the distress is to be left out, and the following substituted "in as much as it hath now been made to appear to me, (*or us, as the case may be,*) that the issuing of a warrant of distress in this behalf would be ruinous to the said A. B., (*the defendant*) or his family," (or that the said A. B., hath no goods or chattels, whereon the levy the said sums by distress). I adjudge &c., putting the condemnation to imprisonment in the manner directed by the statute, in the words of the latter part of the form (I 1).

2. Where by the statute creating the offence, imprisonment in default of payment of the penalty is ordered, the form of conviction (I 2) is to be followed, regard being had to the instructions hereinbefore given, leaving out all reference to the levying of the penalty and costs by distress.

3. Where the punishment is by imprisonment the form (I 3) is to be followed, filling up the blanks therein according to the foregoing instructions, leaving out all mention of any penalty. In this case a warrant of distress must be ordered to levy the costs, unless it be made to appear to the Justice that the issuing of such warrant would be ruinous to the defendant and his family, or that he has no goods or chattels whereon to levy the costs by distress, when imprisonment in addition to that ordered as the punishment of the offence may be adjudged against him, determinable however on payment of such costs. (*Vide* form No. 18.)

Orders.—In filling up the forms, K 1, K 2, K 3, the instructions hereinbefore given with respect to the forms of

convictions should be borne in mind, and it would be also better that in any order made under this Act the Justice should expressly adjudicate the complaint to be true, as the Court of Queen's Bench in England decided in the case of Labalmondriere vs. Frost 28 L. J. (N. S.), M. C. 155, that an order therein referred to, although drawn according to the form K. 3, was bad on its face for not adjudging the complaint to be true.

The formal conviction may be drawn up even after a distress and warrant of commitment have issued upon it. (Paley 5 Ed. 292, note (m). And where by mistake, and without any intention to mislead or defraud, a copy be delivered to the party misstating the name of the informer, or any other fact, and a more correct one be returned to the Sessions, that Court can only take notice of the latter. (R. vs. Allen 15 East 333, 346.) Indeed, it is allowed that the formal conviction may be drawn up at any time before it is acted upon (Per Erle J. in Bott vs. Ackroyd 28 L. J. (M. C.) 208, or before the return of the certiorari, although after a commitment (Massey vs. Johnson 12 East 82), or after the penalty has been levied by distress (R. vs. Barker 1 East 186), or after action brought against the Magistrate (Lindsey vs. Lee, 11 Q. B. 455; Massey vs. Johnson, *supra*; Gray vs. Cookson 16 East 13), or as it seems, even after the conviction has been returned to the Sessions (see Basten vs. Carew 5 D. & R. 558; R. vs. J. J. Huntingdon 5 D. & R. 558; R. vs. Allen, *supra*). But it must be drawn up before the former one has been quashed for informality (Chaney vs. Payne 12 B. 712; R. vs. Chaney 6 Dowl, 281), or the defendant has been discharged for such cause, even although the conviction may not have been removed or quashed (Charter vs. Græme 13 Q. B. 216).

Certificate if he dismiss the complaint, &c.

43. If the Justice or Justices dismiss the information or complaint, he or they may, when required so to do, make an order of dismissal of the same (L), and shall give the defendant a Certificate thereof (M), which certificate upon being afterwards produced, shall without further proof, be a bar to any subsequent information or complaint for the same matter, against the same party.

Care should be taken in making out the certificate, that the subject matter of the information or complaint be properly set out therein. The form (M) is in the following words, "for that (*or as in the summons*)," so that care must be taken, if there be any variance between the subject matter, as set out in the information or complaint, and the evidence given, that the certificate show the true subject matter which was contested between the parties.

In filling up the form (L.), reference should be made to those portions of the instructions relating to convictions applicable thereto. (*Ante* p. 187-193).

If information or complaint negatives any exemption, &c.

44. If the information or complaint in any case negatives any exemption, exception, proviso, or condition in the Statute on which the same is framed, it shall not be necessary for the Prosecutor or Complainant to prove such negative, but the Defendant may prove the affirmative thereof in his defence, if he would have advantage of the same.

(*Vide Ante* p. 191)

Prosecutors and complainants in certain cases to be competent witnesses, and examined upon oath, &c.

Proviso.

45. Every prosecutor of any information not having any pecuniary interest in the result, and every complainant in any complaint whatever his interest may be in the result of the same, shall be a competent witness to support such information or complaint; and every witness at any hearing shall be examined upon oath or affirmation, and the Justice or Justices before whom any witness appears for the purpose of being examined, shall have full power and authority to administer to every witness the usual oath or affirmation; provided that no prosecutor shall be deemed incompetent as a witness on the ground only that he may be liable to costs.

A difference is here created between summary convictions and orders. In seeking to obtain a conviction, the informant if he has no pecuniary interest, can be a witness, but if he seeks thereby compensation for a wrong he cannot testify, the same rule applies to the informant's wife. On the other hand a complainant seeking an order, whatever his interest may be, is a competent witness, and his wife is also competent.

Possible liability for costs is no disqualification.

Justices may adjourn hearing of any case and commit defendant or suffer him to go at large on recognizance.

Proviso,

46. Before or during the hearing of any information or complaint, any one Justice or the

Justices present, may in his or their discretion, adjourn the hearing of the same to a certain time and place to be then appointed and stated in the presence and hearing of the party or parties, or of their respective Attorneys or Agents then present, and in the meantime the Justice or Justices may suffer the Defendant to go at large or may commit (D) him to the Common Gaol or other prison, within the Territorial Division for which the Justice or Justices are then acting, or to such other safe custody as the Justice or Justices think fit, or may discharge the Defendant upon his recognizance (E), with or without sureties, at the discretion of the Justice or Justices, conditioned for his appearance at the time and place to which such hearing or further hearing is adjourned, but no such adjournment shall be for more than one week.

(Vide Ante p. 90)

If defendant or prosecutor do not appear, the case may nevertheless be heard.

47. If, at the time and place to which the hearing or further hearing has been adjourned, either or both of the parties do not appear, personally or by his or their Counsel or Attorneys respectively, before the Justice or Justices or such other Justice or Justices as may then be there, the Justice or Justices then there present may proceed to the hearing or further hearing as if the party or parties were present.

see
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If the prosecutor does not appear.

48. If the Prosecutor or Complainant do not appear, the Justice or Justices may dismiss the information with or without costs, as to him or them seems fit.

If defendant fail to reappear, &c.

49. In all cases when a Defendant is discharged upon his recognizance, and does not afterwards appear at the time and place mentioned in the recognizance, the Justice or Justices who took the recognizance, or any other Justice or Justices who may then be there present, having certified (F) on the back of the recognizance the non-appearance of the accused party, may transmit such recognizance to the proper officer appointed to receive the same by the laws of the Province in which the recognizance was taken, to be proceeded upon in like manner as other recognizances, and such certificate shall be deemed sufficient *prima facie* evidence of the non-appearance of the Defendant.

Form of convictions may be as in schedule where no form is given in any future Statute.

50. In all cases of conviction where no particular form of conviction is given by the Act or Law creating the offence or regulating the prosecution for the same, and in all cases of conviction upon Acts or Laws hitherto passed, whether any particular form of conviction has been therein given or not, the Justice or Justices who convict,

(may draw) up his or their conviction, on parchment or on paper, in such one of the forms of conviction (I 1, 2, 3) as may be applicable to the case, or to the like effect.

Vide s. 35 S 13, Ante, pp. 176 et 162

Where no special form of order is so given, form in schedule may be adopted.

51. In case an order be made, and no particular form of order is given by the Act or Law giving authority to make such order, and in all cases of orders made under the authority of any Acts or Laws hitherto passed, whether any particular form of order is therein given or not, the Justice or Justices by whom the order is made, may draw up the same in such one of the forms of orders (K 1, 2, 3) as may be applicable to the case, or to the like effect.

Vide Ante, s. 42, and observations thereon, p. 199.

Defendant to be served with copy of the minute before distress or commitment.

52. In all cases when by any Act or Law authority is given to commit a person to prison, or to levy any sum upon his goods or chattels by distress, for not obeying an order of a Justice or Justices, the Defendant shall be served with a copy of the Minute of the Order before any warrant of commitment or distress is issued in that behalf, and the Order or Minute shall not form any part of the warrant of commitment or of distress.

A distinction is hereby made between convictions and orders; in the case of a conviction there is no necessity for serving the defendant with a copy of the minute; but, ere a commitment or warrant of distress can issue in the case of an order, the defendant must be served with a copy of its minute. The service thereof should be made in the same way as that of a summons. (Ante p. 152.) The formal order need not be drawn up before the warrant issues (*Ratt vs. Parkinson*, & al 20 L. J. M. C. 208, 210; *Expte. Johnson* 3 B. & S. 947).

Justices may award costs not inconsistent with the fees established by law.

53. In all cases of Summary Conviction, or of Orders made by a Justice or Justices of the Peace, the Justice or Justices making the same, may in his or their discretion, award and order in and by the conviction or order, that the Defendant shall pay to the Prosecutor or Complainant such costs as to the said Justice or Justices seem reasonable in that behalf, and not inconsistent with the fees established by law to be taken on proceeding had by and before Justices of the Peace.

Costs may be awarded to defendant when the case is dismissed.

54. In cases where the Justice or Justices, instead of convicting or making an order, dismiss the information or complaint, he or they, in his or their discretion, may, in and by his or their order of dismissal, award and order that the Prosecutor or Complainant shall pay to the Defendant such costs as to the said Justice or Justices seem reasonable and consistent with law.

Costs so allowed shall be specified.

55. The sums so allowed for costs shall in all cases be specified in the conviction or order, or order of dismissal, and the same shall be recoverable in the same manner and under the same Warrants as any penalty adjudged to be paid by the conviction or order is to be recovered.

And may be recovered by distress.

56. In cases where there is no such penalty to be recovered, such costs shall be recoverable by distress and sale of the goods and chattels of the party, and in default of distress, by imprisonment, with or without hard labour, for any time not exceeding one month, unless the costs be sooner paid.

Vide s. 42, ante p. 198; s. 56 refers to orders of dismissal alone, vide s. 64, post p. 219.

Justice may issue warrant of distress in cases where a pecuniary penalty, &c., has been adjudged.

57. Where a conviction adjudges a pecuniary penalty or compensation to be paid, or where an order requires the payment of a sum of money, and by the Act or Law authorizing such conviction or order, the penalty, compensation, or sum of money is to be levied upon the goods and chattels of the Defendant, by distress and sale thereof; and also in cases where, by the Act or Law in that behalf, no mode of raising or levying the penalty, compensation or sum of money, or of enforcing the payment of the same, is stated or provided, the Justice or any one of the Justices

making such conviction or order, or any Justice of the Peace for the same Territorial Division, may issue his Warrant of Distress (N 1, 2) for the purpose of levying the same, which Warrant of Distress shall be in writing, under the hand and seal of the Justice making the same.

Vide s. 42, ante p. 197.

In certain cases warrant may be backed for execution in another jurisdiction.

58. If, after delivery of the warrant of distress to the Constable or Constables to whom the same has been directed to be executed, sufficient distress cannot be found within the limits of the jurisdiction of the Justice granting the warrant, then upon proof being made upon oath or affirmation of the handwriting of the Justice granting the warrant, before any Justice of any other Territorial Division, such Justice shall thereupon make an endorsement (N 3) on the warrant, signed with his hand, authorizing the execution of the warrant within the limits of his jurisdiction, by virtue of which warrant and endorsement the penalty or sum, and costs, or so much thereof as may not have been before levied or paid, shall be levied by the person bringing the warrant, or by the person or persons to whom the warrant was originally directed, or by any Constable or other Peace Officer of the last mentioned Territorial Division, by distress and sale of the goods and chattels of the Defendant therein.

Vide s. 11, ante pp. 161 and 162.

When the issuing of a warrant would be ruinous to defendant, or there are no goods, Justice may commit him.

59. Whenever it appears to any Justice of the Peace to whom application is made for any warrant of distress, that the issuing thereof would be ruinous to the Defendant and his family, or whenever it appears to the Justice, by the confession of the Defendant or otherwise, that he hath no goods and chattels whereon to levy such distress, then the Justice, if he deems it fit, instead of issuing a warrant of distress, may (O 1, 2) commit the Defendant to the Common Gaol, or other prison in the Territorial Division, there to be imprisoned with or without hard labour, for the time and in the manner the Defendant could by law be committed in case such warrant of distress had issued, and no goods or chattels had been found whereon to levy the penalty or sum and costs.

Vide s. 42, ante, p. 199 s. 62, post p. 211.

When distress is issued, defendant may be bailed or detained until it is returned.

60. In all cases where a Justice of the Peace issues any warrant of distress, he may suffer the Defendant to go at large, or verbally, or by a written warrant in that behalf, may order the Defendant to be kept and detained in safe custody, until return has been made to the warrant of distress, unless the Defendant gives sufficient security, by recognizance or otherwise, to the

satisfaction of the Justice, for his appearance before him at the time and place appointed for the return of the warrant of distress, or before such other Justice or Justices for the same Territorial Division, as may then be there.

If defendant does not afterwards appear, the recognizance to be certified and transmitted to the proper officer.

61. In all such cases where a Defendant gives security by recognizance, and does not afterwards appear at the time and place in the said recognizance mentioned, the Justice who hath the same, or any Justice or Justices who may then be there present, upon certifying (F) on the back of the recognizance the non-appearance of the Defendant, may transmit the recognizance to the proper officer appointed by law to receive the same, to be proceeded upon in like manner as other recognizances, and such certificate shall be deemed sufficient *prima facie* evidence of the non-appearance of the Defendant.

Vide ss. 13, 35 & 49, ante.

In default of sufficient distress, Justice may commit defendant to prison.

Proviso : Term limited.

62. If at the time and place appointed for the return of any warrant of distress, the Constable, who has had execution of the same returns (N 4) that he could find no goods or chattels whereon he could levy the sum or sums therein mentioned, together with the costs of, or occasioned by the

levy of the same, the Justice of the Peace before whom the same is returned may issue his warrant of commitment (N 5) directed to the same or any other Constable, reciting the conviction or order shortly, the issuing of the warrant of distress, and the return thereto, and requiring the Constable to convey the Defendant to the Common Gaol, or other prison of the Territorial Division for which the Justice is then acting, and there to deliver him to the Keeper thereof, and requiring the Keeper to receive the Defendant into such gaol or prison, and there to imprison him, or to imprison him and keep him to hard labor, in the manner and for the time directed by the Act or Law on which the conviction or order mentioned in the warrant of distress is founded, unless the sum or sums adjudged to be paid, and all costs and charges of the distress, and also the costs and charges of the commitment and conveying of the Defendant to prison, if such Justice thinks fit so to order (the amount thereof being ascertained and stated in such commitment,) be sooner paid; but if no term of imprisonment be specified in the Act or Law, the period for which the Justice shall order the Defendant to be so imprisoned shall not exceed three months.

Warrant of Distress, Form of.—The proper mode of proceeding after conviction, where in the first instance the penalty, sum of money, compensation or costs is to be levied by distress, is, if immediate payment be enjoined by the

statute, or otherwise at the expiration of a limited time, for the Justice to make a warrant, in the form (N), in the case of a conviction, or in the form (N 2), in the case of an order, in writing under his hand and seal, reciting the offence, conviction and adjudication as in the conviction mentioned, or the complaint order and adjudication, as in the order set out. Then a statement of non-payment of the sums so specified, and an order to the officers to levy them. The blank in the form left for the number of days granted to the defendant for payment should be filled up in such a manner as to give him sufficient time to procure the means of payment (Jones vs. Johnson 5 Exch. 862, 876; S. C., in error 7 Exch. 452; R. vs. Williams 19, L. J. M. C. 126); and it is submitted that at least four, and not more than eight days should elapse between the distress and the sale. (Paley 308).

Femme Covert—Partners.—If the offender be a femme covert subject, to this species of conviction, (*ante* p. 149) the goods of the husband are not liable to be distrained for the penalty. If the penalty be recoverable by distress against offenders who are partners, the constable may it is conceived seize both the joint and separate effects, or either, as on a levy or seizure by the Sheriff, each party being answerable for the whole, and not merely for a proportionate part. (Oke's Mag. Syn. 176).

Defective order or conviction.—A warrant of distress founded upon and reciting a defective order or conviction, is bad (Day vs. King 5 A. & E. 359). It should be warranted by the conviction, and all those facts must appear upon its face, which are necessary to give jurisdiction to the Justices over the subject matter (Johnson vs. Reid, 6 M. & W. 124; Re Peerless 1 Q. B. 143; Paley 308).

Defendant not to suffer by distress and imprisonment on one conviction.—Where an offender is convicted in one penalty, under a statute providing a corporal punishment on failure of sufficient distress, and has effects sufficient only to satisfy part, it has been held the goods ought not to be taken but the corporal punishment should be resorted to. If, however, the same person be separately convicted in two penalties, and his goods are sufficient to satisfy one only, they ought to be levied under *one* conviction, and the corporal punishment should be inflicted under the other; but the law never intended that a man should suffer both punishments for one conviction (Okes Mag. Syn 176; R. vs. Wyatt 2 Ld. Raym. 1195).

Duty of Constable.—It is laid down by Mr. Sergeant Hawkins that, upon the warrant of a Justice for levying a forfeiture, where the whole or any part thereof belongs to the Queen, the officer is justified in breaking open outer doors for the execution of the warrant; but there seems to be no such power in other cases, where no part of the penalty is vested in the Crown; but under sec. 93 post, any Judge of Sessions, Police Magistrate, or Stipendiary Magistrate, in all cases where resistance is offered to the execution of any summons, warrant of execution or other process issued by him, may enforce the due execution of the same by the means provided by the law for enforcing the execution of the process of other Courts in like cases, so that in Quebec, on a return that outer doors had been closed, and proof being made thereof, the officials above named can give authority to break open such doors; but no such power exists in ordinary Justices of the Peace. The constable distraining has no power to impound the goods on the premises, and ought not to remain longer than a reasonable time for the purpose of removing them (Peppercorn vs. Hoffman, 9 M. & W. 618;

Paley 303). If the party against whom a warrant of distress issues pay or tender to the constable having the execution of it the sums mentioned in the warrant, together with the expenses of the distress, the constable should cease to execute the warrant. If the constable sell under the warrant, or receive the sums mentioned therein, or be prevented from distraining in any way, he should make his return to the Justice within a reasonable time. If he refuse to certify what he has done, or if he has levied or received the penalty, and refuse to pay it over, he may be proceeded against by indictment or information; or, it seems, the Justice before whom the warrant was returnable may fine him. (R. vs. Nash; 2 Lord Raym. 990. Paley 306, 309). Should the constable be unable to find goods, from the sale of which all the sums mentioned in the distress warrant will not in his opinion be realized, he should make his return in the form (N 4). Vide as to indorsation in the event of defendant's effects being in another Division, s. 58, ante p. 208.

Warrant of Commitment.—On the return (N 4) being made the Justice should make out his warrant of commitment (N 5), filling up the blanks therein according to the directions therein contained from the distress warrant, and in the latter part thereof, to wit, the order to the gaoler, care must be taken that the time and manner of imprisonment are the same as in the conviction and warrant of distress; the cost and charges of the distress, and of the conveying of the defendant to Gaol must also be ascertained, and the blank existing therefor in the form must be filled up with a sum certain. The commitment must be properly dated and signed, and sealed by the Justice. (As to sealing Vide 32 & 33 Vic. c. 36, s. 4 post.)

Justice committing not Justice convicting.—Should the

Justice who issues either the distress warrant, or the warrant of committal be not one of the convicting Justices, care must be taken in both warrants to fill up the blanks left for the name or names of the convicting Justices properly.

Proper Gaoler.—The warrant must be directed to the proper gaoler, and is bad if it only orders in general terms that the defendant be carried to prison (see *Re Masters* 33 L. J. Q. B. 146; *Paley* 319).

Time of Imprisonment.—The period of imprisonment will be reckoned from the time of defendant being taken into custody by the constable, and not from the date of his receipt at the gaol; and the constable, where a day or more elapses between the arrest of the defendant and his delivery to the gaoler, should indorse upon the warrant, for the gaoler's guidance, "I apprehended the within named defendant under this warrant on the _____ day of 187 .

H. J. Constable of

(Oke's Mag. Syn. 168, n. (10.)

Paley 320.)

Several defendants.—In cases where two or more defendants are convicted by one conviction, it is far better that separate commitments should be made for each, for if all are included in one, it is almost impossible so to draw it as to be impregnable to the attacks of counsel.

Certainty required.—It is necessary that the warrant show a good conviction, and that the offence for which the commitment is made be described with certainty (*vide ante* p. 187). In England, previous to the passing of the 11 & 12 Vic., c. 43, the Court of Queen's Bench would not criticise a warrant of commitment with the strictness to which a conviction was subjected, if there were reasonable ground for presuming that the conviction (on which the commitment was founded) was

free from objection (R. vs. Rogers, 1 D. & R. 156 ; R. vs. Helps ; 3 M. & G. 331 ; Paley 325). If the conviction and warrant substantially agreed it was then considered sufficient (Barnes vs. White, 1 C. B. 192, 211). Nowadays it may be laid down that the offence of which the defendant has been convicted must be substantially set out in the commitment, and the nearer the statement thereof in the commitment approaches to that in the conviction the better it is. The forms N1, N2, N5, O1, O2, all require the offence, or subject matter of the complaint to be set out as in the conviction or order, as the case may be ; and no safer rule can be followed than to copy in the commitment the statement of the offence, or subject matter of the complaint found in the conviction or order on which it is based.

The directions given as to the period of imprisonment in drawing the conviction (ante p. 198) should be consulted, and the commitment should in all cases follow the conviction, or order on which it is founded.

Second Commitment.—In the event of a defect existing in the commitment under which the defendant has been lodged in gaol, the Justice who signed it can substitute therefor a commitment in which such defect does not exist. It must be borne in mind, however, that the second commitment be sustained by the conviction. Such second commitment can be substituted at any time previous to the quashing of the conviction on which it is founded, or the discharge of the defendant on *Habeas Corpus* (Reg. vs. Richards, 5 Ad. & E. (N. S.) 923 ; *Exparte Cross*, 2 H. & H. ; *Exparte Smith*, 27 L. J. (N. S.) M. C. 186 ; *Exparte McDonnell*, Badgley & Monk, J. J. Montreal, 1870, and Caldwell's case, Badgley & Monk, J. J., 1870, mss. notes, W. H. K.) It would seem, however, that the Justice substitut-

ing should so effect the substitution as to show the gaoler that the second commitment is given to him in lieu of the first.

Discharge.—In all cases where a party is committed in default of payment, he is entitled to his liberty on paying into the hands of the gaoler the different sums specified in the commitment. (Sec. 84, post).

Commitment bad in part.—If a commitment be bad in part, it is in most instances bad *in toto*. Where a party was committed until he paid two several sums of money, one of which was not due, the Court quashed the commitment altogether (*Ex parte Addis*, 2 D. & R. 167; Paley 333).

Warrant in force until returned.—The warrant of commitment, unless it is expressly made returnable at a particular time, remains in force till it be fully executed, whatever length of time that may be, so long as the magistrate continues in office. At his death the warrant lapses. If the offender be apprehended and suffered to go at large upon an offer to find security, which is not fulfilled, it seems that he may be apprehended again upon the same warrant (*Dickenson vs. Brown*, Peake, N. P. C., 234; Paley, 339).

The officer, at the time of the arrest, should have the warrant ready to be produced, if its production should be required by the party arrested (*Galliard vs. Laxton*, 2 B. & S., 363; Paley, 336). Should the person against whom the warrant of commitment issues be not found within the jurisdiction of the Justice signing the same, or if he escapes into, or is suspected to be in any place within Canada, out of such jurisdiction, it is submitted that the warrant of commitment can be indorsed under s. 11 (ante p. 161), and the defendant arrested in any other Division and conveyed to the Division within which the commitment was signed. The

11 & 12 Vic., c. 43, s. 3, expressly extends indorsation to warrants of commitment, whilst our Aet makes use of the word "any warrant;" but the 24 Geo. 2, c. 55 (Imperial Act), provides generally for indorsation of all warrants issued by Justices (Paley 336 ; Glen 104).

Imprisonment for a subsequent offence to commence at expiration of that for a previous offence.

63. Where a Justice or Justices of the Peace, upon any information or complaint adjudges or adjudge the Defendant to be imprisoned, and the Defendant is then in prison undergoing imprisonment upon conviction for any other offence, the warrant of commitment for the subsequent offence shall be forthwith delivered to the gaoler or other Officer to whom it is directed, and the Justice or Justices who issued the same, if he or they think fit, may award and order therein, that the imprisonment for the subsequent offence shall commence at the expiration of the imprisonment to which the Defendant was previously sentenced.

This section refers solely to those cases in which the defendant is already in the gaol of the Territorial Division for which the magistrate acts. Should the defendant be imprisoned, however, in another Division, on another conviction, this section does not apply, and on his liberation therefrom he should be arrested on the commitment indorsed as before mentioned (ante p. 217), and committed to the custody of the gaoler of the Division within which the conviction or order was made.

Where a Justice convicts a defendant on the same day of two or more offences, the conviction and commitment in one

of the cases should adjudge and order the imprisonment to commence at the expiration of the imprisonment adjudged and ordered in the other case. (Form of conviction from Oke, suitable to such a case, will be found in the Appendix to this Act No. 25.) See *R. vs. Wilkes*, 4 Burr. 2577; *Wilkes vs. Rex* (in error), 4 Bro. P. C. 367; *Oke's Mag. Syn.* 147 and note (39); *Reg. vs. Cutbush*, 2 L. R. Q. B. 379.)

If information be dismissed, costs may be recovered by distress on prosecutor.

64. When any information or complaint is dismissed with costs, the sum awarded for costs in the Order for Dismissal may be levied by distress [Q 1] on the goods and chattels of the Prosecutor or Complainant in the manner aforesaid; and in default of distress or payment, the Prosecutor or Complainant may be committed [Q 2] to the common gaol or other prison, in manner aforesaid, for any time not exceeding one month, unless such sum, and all costs and charges of the distress, and of the commitment and conveying of the prosecutor or complainant to prison (the amount thereof being ascertained and stated in the commitment), be sooner paid.

Vide general observations on filling up blanks in forms of warrants of distress and commitment, ante pp. 211-218. In no case of dismissal in default of distress can an informant or complainant be committed for a longer period than one month, such imprisonment to cease on payment to the gaoler of the sums mentioned in the commitment.

Parties aggrieved may appeal in certain cases to the Court of General or Quarter Sessions, &c.

Proviso ; Appellant to give security or bail. Or deposit such sum of money as will cover amount of judgment and costs.

Court to determine the matter : and may order payment, &c.

In case conviction or order is quashed, the Court to order repayment of deposit to appellant, and a memorandum to be endorsed on the conviction or order.

65. In all cases where the sum adjudged to be paid on any summary conviction or order exceeds ten dollars, or the imprisonment adjudged exceeds one month, or the conviction has taken place before, or the order has been made by one Justice only, (unless it be otherwise provided in the special Act under which the conviction takes place) any person who thinks himself aggrieved by any such conviction or order, may appeal in the Province of Quebec or Ontario, to the next Court of General or Quarter Sessions of the Peace, which shall be holden not less than twelve days after the day of such conviction or order, for the district, county or place wherein the cause of the complaint has arisen, or, in the Province of Quebec, to any other Court for the time being discharging the functions of such Court of General or Quarter Sessions, in and for such district, in the Province of Nova Scotia to the next term or sitting of the Supreme Court in the County, and in the Province of New Bruns-

wick to a Judge of the Supreme Court or of the County Court of the County where the cause of the information or complaint has arisen; Provided that such person shall give to the prosecutor or complainant a notice in writing of such appeal, and of the cause and matter thereof, within four days after such conviction or order, and eight days, at the least, before the holding of such Court, and shall also either remain in custody until the holding of the Court, or shall enter into a recognizance, with two sufficient sureties, before a Justice or Justices of the Peace, conditioned personally to appear at the said Court and to try such appeal, and to abide the judgment of the Court thereupon, and to pay such costs as shall be by the Court awarded; or if such appeal is against any conviction or order whereby only a penalty or sum of money is adjudged to be paid, shall deposit with the Justice or Justices convicting or making the order such a sum of money as such Justice or Justices deem to be sufficient to cover the sum so adjudged to be paid, together with the costs of the conviction or order and the costs of the appeal; and upon such notice being given and such recognizance being entered into, or such deposit being made, the Justice or Justices before whom such recognizance is entered into, or such deposit has been made, shall liberate such person, if in custody; and the said Court shall hear and determine the

matter of the appeal, and shall make such order therein, with or without costs to either party, as to the Court seems meet ; and in case of the dismissal of the appeal, or the affirmance of the conviction or order, shall order and adjudge the offender to be punished according to the conviction, or the defendant to pay the amount adjudged by the said order and to pay such costs as may be awarded, and shall, if necessary, issue process for enforcing such judgement ; and in any case where, after any such deposit has been made as aforesaid, the conviction or order is affirmed, the Court may order the sum thereby adjudged to be paid, together with the costs of the conviction or order and the cost of the appeal, to be paid out of the money deposited, and the residue thereof, if any, to be repaid to the defendant ; and in any case where, after any such deposit, the conviction or order is quashed, the Court shall order the money deposited to be repaid to the defendant, and in every case where any conviction or order is quashed on appeal as aforesaid, the Clerk of the Peace or other proper officer shall forthwith endorse on the conviction or order a memorandum that the same has been quashed ; and whenever any copy or certificate of such conviction or order is made, a copy of such memorandum shall be added thereto, and shall be sufficient evidence that the conviction or order has been quashed in every case where such

copy or certificate would be sufficient evidence of such conviction or order.

This section applies to all convictions and orders founded upon statutes which do not give an appeal either to the Prosecutor or to the defendant. It does not apply to any conviction or order founded upon a statute by which the right of appeal from such conviction or order is denied. It

does not apply to any conviction or order founded upon a statute by which special provisions, differing from those in the present section contained, have been or may be made regulating appeals from convictions or orders made under it.

In all cases where by the statute on which is based the conviction or order no provision has been made for an appeal therefrom, an appeal may be taken under this section in any one of the following cases :

1. Where the sum adjudged to be paid exceeds ten dollars.
2. Where the imprisonment exceeds one month.
3. Where the conviction has taken place before, or the order has been made by one Justice only.

Sum adjudged.—The different sums specifically adjudged to be paid by the conviction or order can alone be taken into consideration in forming the amount of ten dollars, thus the probable costs of the distress, of the commitment and conveying to gaol cannot be looked upon as forming portions of the said sum, and it is very questionable whether even the costs specified in the conviction form a portion of the ten dollars (Reg. vs. J. J. Warwicksh. 6 E. & B. 837).

Imprisonment adjudged.—No difficulty can be experienced in this case, the term or terms of imprisonment in the conviction specified exceeding one month, an appeal lies.

Conviction before one Justice only.—Where the defendant is convicted before a Judge of Sessions of the Peace,

Recorder, Police Magistrate, District Magistrate, or Stipendiary Magistrate, appointed for any District, County, City, Borough, Town, or place, and sitting at a Police Court or other place appointed in that behalf, and the sum adjudged to be paid does not exceed ten dollars, or the imprisonment adjudged does not exceed one month, there is no appeal, for those officials have full power to do alone what can by this Act be done by two or more Justices, and as such a conviction before two Justices is not appealable it necessarily follows that a conviction before a Judge of Sessions for instance is not a conviction before one Justice of the Peace. (*Vide s. 91, post*).

Court of Appeal.—Ontario and Quebec. In Ontario the appeal lies to the next Court of General or Quarter Sessions of the Peace, held for the District, County or place wherein the cause of complaint has arisen, not less than twelve days after the day on which the conviction or order appealed from is made.

In Quebec, in the Districts wherein Courts of General or Quarter Sessions are held, the appeal lies to them generally as in Ontario; but in those districts wherein no such Courts of General and Quarter Sessions are in existence the appeal lies at present to the next term of the Court of Queen's Bench, Crown side, held in the District within which the cause of complaint arose, not less than twelve days after the day on which the order or conviction is made.

Nova Scotia.—The appeal lies to the next term of the Supreme Court in the County where the cause of the information or complaint has arisen.

New Brunswick.—The Appeal lies to a Judge of the Supreme Court, or of the County Court of the County wherein the cause of information or complaint has arisen.

Notice—delay to give service.—The notice of Appeal should be in the form (No. 49) in the Appendix to this Act, and should be signed by the party appealing or his Attorney. It should be served upon the prosecutor or complainant or the person in whose favor the order for costs has been given, in the same manner as a summons; the notice itself being in duplicate or triplicate, as the case may require, if more than one person be respondent. It should be so served within four days after the verbal conviction or order has been made, and not from the time the formal order or conviction is drawn up and signed (*Ex parte Johnson*, 3 B. & S. 947,) and eight days at least before the holding of the Court appealed to, and in this latter delay neither the day of giving the notice nor the day of holding the Sessions can be computed (*R. vs. JJ. Herefordsh.* 3 B. & Ald, 581.) If the last of the four days limited for notice fall on a Sunday, notice given on the Monday following is too late, it should be given on the Saturday preceding (*R. vs. JJ. Middlesex*, 2 Dowl. N. S. 719). Where there are several appellants they may either join in one notice, or each of them may give a separate notice. (*R. vs. JJ. Oxfordsh.* 4 Q. B. 177; *Withnall vs. Gartham*, 6 T. R. 398.)

Remaining in custody — recognizance — deposit.—The person so appealing, it is provided by the present section, shall not only give notice of appeal, but shall also remain in custody until the holding of the Court appealed to, or give a recognizance with two sufficient sureties before a Justice or Justices of the Peace, conditioned personally to appear at the said Court and to try such appeal, and to abide the judgment of the Court thereupon, and to pay such costs as shall be by the Court awarded; but if the conviction or order be one whereby only a penalty or sum of money is

adjudged to be paid, the person so appealing may, in lieu of remaining in custody, or giving a recognizance, deposit in the hands of the Justice or Justices convicting, or making the order such sum of money as to them shall seem requisite to cover the sum so adjudged to be paid, with the costs of conviction or order, and the costs of the appeal.

If therefore the party aggrieved by the conviction or order gives notice of his intention to appeal, and at the same time notifies his option of remaining in custody until the holding of the Court to which he has appealed, the question arises as to how the Justice convicting should act. It becomes necessary therefore to inquire whether the notice of appeal and the remaining in custody suspend the execution of the conviction or order until the appeal be determined, or whether the remaining in custody is to be looked upon as part of the punishment inflicted by the conviction and suffered thereunder.

Effect of Appeal at Common Law.—At Common Law an appeal is no stay of execution, without a special order for that purpose. A writ of error, even when allowed and returnable, is no supersedeas of execution in criminal cases where there has been sentence and imprisonment. If the party convicted was in prison under his sentence when the writ of error was sued out, he continued in prison pending the writ of error, and if he was not, he might still be taken and imprisoned pending the writ of error (*Vide Kendall vs. Wilkinson*, 4 E & B. 680, *Hope vs. Hope*, 23 L. J. (N. S.) Chanc. 682; *King vs. Brooke*, 2 T. R. 196). There can be no doubt that where the notice of appeal and the recognizance are duly given, execution is suspended, for the Justice, in the section now under consideration, is directed to liberate the Appellant if in custody in such case, and the same effect

is given to the making of the deposit after notice of appeal ; but the section is singularly barren of any provision to meet the circumstances when the would be Appellant elects to remain in custody in lieu of giving a recognizance or making a deposit. There is in fact no provision as to the suspension of execution in such case, and taking for instance a conviction by which a defendant is condemned in a penalty of fifteen dollars, and in default of sufficient distress is ordered to be imprisoned six weeks, the Court to which he appeals does not sit for ten weeks, is he to remain in prison until the Court so sits a space of ten weeks, in order to enable him to reverse a conviction or order condemning him to six weeks incarceration? and if he fails in his appeal is he to be imprisoned for another term of six weeks under the conviction? Or is his detainer in custody to be considered as in execution of the conviction or order? and is he to be discharged at the expiration of the six weeks, and not detained in custody until the Court to which he has appealed sits? What should the Justice of the Peace do in the event of the Appellant declaring his option to remain in custody, at the same time asserting that his chattels are sufficient to satisfy the conviction, without injury to himself or his family?

It would be far better were some amendments made by which, on service of notice of appeal, and a signification to the convicting Justice of the Appellant's willingness that the conviction or order should be executed, that the Appellant might have his appeal, and the conviction be executed according to its tenor and effect, provision being made in the event of the amount of penalty and costs being levied under the distress for its being returned to the Appellant in the event of his succeeding on his appeal.

The recognizance should be in the form (No. 50) in the Appendix to this Act, and can be received by any Justice.

Where only a penalty or sum of money and costs are adjudged to be paid, as already mentioned, the Appellant may deposit with the Justice such sum of money as the Justice shall deem sufficient to cover the sums adjudged by the conviction or order and the costs of appeal. This deposit can only be received by the Justice or Justices convicting, and on his or their refusal to fix or receive the deposit, it is submitted that a Mandamus could issue to force them to perform their said duties; care should also be taken that the sum fixed for the deposit be not exorbitant.

The order for liberation of the Appellant from custody, on his complying with the conditions of notice, and recognizance or deposit should be served on the gaoler.

Hearing and determining Appeal.—Under s. 72, post p. 236, every Justice of the Peace, before whom any person shall be summarily convicted of any offence by virtue of this Act, shall transmit the conviction to the proper Court or Judge in Appeal before the time when an appeal from such conviction could be heard, there to be kept by the proper officer among the records of the Court; but, strange to say, there is no similar provision with respect to orders. There can be no doubt, however, that the intention of the Legislature was to assimilate the proceedings on convictions and orders, as both by the Imp. Act, c. 43, s. 14, and the old Canadian Act, C. S. C. c. 153, s. 42, it is provided that all convictions and orders shall be "lodged with the Clerk of the Peace, to be by him fyled among the Records of the General or Quarter Sessions of the Peace." The Justice, therefore, should follow the same course of proceeding in the matter of orders as in that of convictions.

On the hearing of appeals, the first step after the appeal is called on is, that the Appellant should prove his notice, unless

it be admitted. As soon as the notice of appeal has been proved or admitted the Clerk of the Court proceeds to read the conviction which has been returned by the convicting Justices. If any objections arise on the face of the conviction, the Appellant usually begins; and if he does so he is bound to state all his objections thereto at once, in order that they may be met on the other side. No objection can be made in appeal, unless it has been taken before the Justice, and no variance can be taken advantage of unless it be shewn that the Justice refused to adjourn the hearing, the person summoned having been deceived or misled thereby (*Vide s. 67, post p. 231*). But it is also provided that in all cases of Appeal, the Court or Judge to which the Appeal is taken shall hear and determine the original charge or complaint on its merits, notwithstanding any defect of form or otherwise in such conviction or order; and if the person charged or complained against is found guilty, the conviction or order shall be affirmed, and the Court shall amend the same if necessary (*Vide s. 68, post p. 232*). Though the two clauses may be slightly contradictory, yet it may be laid down as the governing principle in matters of appeal, that the case must be heard on the merits, if the charge or complaint disclose an offence punishable on summary conviction, or a subject matter on which an order can be made. The observations on *s. 5* and *s. 12*, ante p. 154 apply to appeals. If no objections to the conviction or order be made, either of the parties, Appellant or Respondent, may request that a jury be empanelled to try the facts of the case, and thereupon the Court must empanel such jury. There can be no challenge in such case except for cause (*Vide as to oath to jurymen, s. 66, post p. 231*). On the finding of the jury, the Court shall give such judgment as the law requires, that is to say if

the verdict be for the Appellant, the conviction should be quashed, and if a deposit has been made, that it should be returned to the Appellant, if on the contrary the verdict be in favor of the Respondent, the appeal should be dismissed, and the conviction or order be affirmed, the defendant should be ordered to be punished according to the conviction, or to pay the amount adjudged by the order, and such costs as may be awarded ; and in the event of a deposit, it may be, decreed that the sums ordered to be paid by the conviction or order, together with the costs below and in appeal should be paid out of it, and the remainder returned to the Appellant.

No special provision is made on the subject of awarding costs to the Appellant in the event of success ; but s. 74 seems to vest in the Court a discretion to be exercised in the matter of costs with respect to both Appellant and Respondent.

In the event of the appeal being dismissed, the Court to which the appeal has been taken can issue its own process to enforce its judgment by this section ; but by s. 75, provision is made for the recovery of costs ordered to be paid by any party who has not been bound by recognizance conditioned to pay the same by warrant of distress, and in default of sufficient distress the party may be imprisoned for any time not exceeding two months.

Quashing conviction or order, entry of.—When any conviction or order is quashed by the Court of Appeal, an entry thereof should be made by the Clerk of the Peace or other proper officer, on the back of such conviction or order, and whenever a copy of such conviction or order be made, a copy of such entry should always be added thereto, forming sufficient evidence of the conviction or order having been quashed.

Court appealed to may empanel a jury to try the case.

66. When an appeal has been lodged in due form and in compliance with the requirements of this Act, against any summary conviction or decision, the Court of General or Quarter Sessions of the Peace or Court appealed to, may at the request of either appellant or respondent, empanel a Jury to try the facts of the case, and shall administer to such Jury the following oath:

Oath of Juror.

"You shall well and truly try the facts in dispute in the matter of A. B., (*the informant*) against C. D., (*the defendant*), and a true verdict give according to the evidence: So help you God."

Judgment.

Proviso; as to evidence.

And the Court, on the finding of the Jury, shall give such judgment as the law requires; and if a Jury be not so demanded, the Court shall try and be the absolute judges as well of the fact as of the law in respect to such conviction or decision; but no witness shall in either case be examined who was not examined before the Justice or Justices at the hearing of the case.

Appeal not to be based on alleged defect in form or substance, unless the same was objected to before the Justice, and he refused to adjourn the case, &c.

67. No judgment shall be given in favor of the appellant if the appeal is based on an objection to

any information, complaint or summons, or to any warrant to apprehend a defendant, issued upon any such information, complaint or summons, for any alleged defect therein in substance or in form, or for any variance between such information, complaint, summons or warrant and the evidence adduced in support thereof at the hearing of such information or complaint,—unless it shall be proved before the Court hearing the appeal that such objection was made before the Justice or Justices of the Peace before whom the case was tried and by whom such conviction, judgment or decision was given—nor unless it is proved that notwithstanding it was shewn to such Justice or Justices of the Peace that by such variance the person summoned and appearing or apprehended, had been deceived or misled, such Justice or Justices refused to adjourn the hearing of the case to some further day, as provided by this Act.

Decision to be given on the merits, notwithstanding defect of form in conviction, which may be amended.

68. In all cases of appeal from any summary conviction or order had or made before any Justice or Justices of the Peace, the Court to which such appeal is made shall hear and determine the charge or complaint on which such conviction or order has been had or made upon the merits, notwithstanding any defect of form or otherwise in such conviction or order; and if the person

charged or complained against is found guilty the conviction or order shall be affirmed and the Court shall amend the same if necessary, and any conviction or order so affirmed or affirmed and amended shall be enforced in the same manner as convictions or orders affirmed in appeal.

If appeal is abandoned, after notice given, costs to be recovered.

69. And for the more effectual prevention of frivolous appeals, the Court of General or Quarter Sessions of the Peace or other Court or Judge to whom an appeal is made, upon proof of notice of the appeal to such Court having been given to the person entitled to receive the same, though such appeal was not afterwards prosecuted or entered, may, if such appeal has not been abandoned according to law, at the same Court for which such notice was given, order to the party or parties receiving the same such costs and charges as by the said Court or Judge may be thought reasonable and just, to be paid by the party or parties giving such notice, such costs to be recoverable in the manner provided by this Act for the recovery of costs upon an appeal against an order or conviction.

Proceedings after Appeal.

70. In case an appeal against any conviction or order be decided in favor of the Respondents, the Justice or Justices who made the conviction

or order, or any other Justice of the Peace for the same Territorial Division, may issue the warrant of distress or commitment for execution of the same, as if no Appeal had been brought.

No certiorari, &c.

71. No conviction, or order or adjudication made in appeal therefrom, shall be quashed for want of form, or be removed by *certiorari* into any of Her Majesty's Superior Courts of record; and no warrant of commitment shall be held void by reason of any defect therein, provided it be therein alleged that the party has been convicted and there be a good and valid conviction to sustain the same.

It requires no special law to authorize the writ of *certiorari*; for it is a consequence of all inferior jurisdictions of record to have their proceedings removable for the purpose of being examined by the Court of Queen's Bench, or the Court occupying the revisory position of that Court. In this respect the proceeding by *certiorari* differs from the right of *appeal*; for whereas the latter does not exist, unless created by express provision, the other lies of course unless expressly taken away by statute (per Holt C. J. 1 Ld. Raym 469, Paley 403).

Such was the law before the passing of the Act now under consideration; but s. 66, by which the right to appeal from summary convictions and orders is very much extended, having enlarged the remedy open to any person considering himself aggrieved by any such conviction or order, the Legislature determined on abolishing as far as possible the other remedy of *certiorari*.

This clause, however, it is submitted, does not prevent the issuing of the writ at the suit of the prosecutor. In England it has been held that even where a statute in express terms declares that the proceedings shall not be removed by *certiorari*, this does not prevent its issuing at the suit of the prosecution (R. vs. Allen 15 East, 333, 341, 342; see. 2 Chit. Rep. 186). This privilege is extended to any private person prosecuting, though he may have become nominally the defendant in a subsequent stage of the proceedings, as if the conviction has been quashed at the Sessions, with costs to be paid by the prosecutor, and he afterwards seeks to quash the order of Sessions (R. vs. Farewell, 1 East 305; R. vs. Berkeley, 1 Ken. 70; R. vs. Rodenham, 1 Cowp. 78; R. vs. Boulton, 4 A. & E. 498; Paley 409, 410). Where there is a want or excess of jurisdiction, the present section will not have the effect of taking away the *certiorari*. (R. vs. The Sheffield Railway Co., 11 A. & E. 194, R. vs. Rose, 1 Jur. (N. S.) 802; R. vs. Boulton, 4 A. & E. 498; Paley 410, note (o). Such want or excess of jurisdiction may be shewn by affidavit, although the conviction may be good *in facie* (R. vs. Bolton 1 Q. B. 66, Re Bailey *et al.*, 3 E. & B. 607), or where the Court has been illegally constituted (R. vs. Cheltenham Commissioners, 1 Q. B. 467), or the conviction has been obtained by fraud. (R. vs. Gillyard, 12 Q. B., 527; Parry vs. Newman, 15 M. & W. 653; Paley 410.)

(Commitment).

Justice convicting to return the conviction. And the deposit money, if any. Certificate of conviction.

72. Every Justice of the Peace before whom any person shall be summarily convicted of any offence by virtue of this Act, shall transmit the

conviction to the Court of General or Quarter Sessions or to the Court discharging the functions of the Court of General or Quarter Sessions as aforesaid, or to any other Court or Judge to which the right to appeal is given by section sixty-five of this Act, as the case may be, in and for the District, County or place where the offence has been committed, before the time when an appeal from such conviction could be heard, there to be kept by the proper officer among the records of the Court; and if such conviction has been appealed against, and a deposit of money made, shall return the deposit into the said Court; and upon any indictment or information against any person for a subsequent offence, a copy of such conviction, certified by the proper officer of the Court, or proved to be a true copy, shall be sufficient evidence to prove a conviction for the former offence, and the conviction shall be presumed to have been unappealed against, until the contrary be shown.

Vide s. 65, ante p. 228.

Effect of conviction if no appeal.

73. In all cases where it appears by the conviction, that the defendant has appeared and pleaded, and the merits have been tried, and that the defendant has not appealed against the conviction where an appeal is allowed, or if appealed against, the conviction has been affirmed, such conviction shall not afterwards be set aside,

or vacated in consequence of any defect of form whatever, but the construction shall be such a fair and liberal construction as will be agreeable to the justice of the case.

To whom costs to be payable.

74. If upon any Appeal the Court trying the Appeal orders either party to pay costs, the order shall direct the costs to be paid to the Clerk of the Peace or other proper officers of the Court, to be by him paid over to the party entitled to the same, and shall state within what time the costs shall be paid.

Vide s. 65, ante p. 230.

This clause should have required the costs in all cases to be paid to the Clerk of the Court, or of the Judge sitting in Appeal, and should also state within what time the costs in all cases should be paid. It is requisite, under this clause, that the order to pay costs within a certain specified time to the proper officer should be incorporated in the order dismissing the appeal, or quashing the conviction.

75. If the same be not paid within the time so limited, and the party ordered to pay the same has not been bound by any recognizance conditioned to pay such costs, the Clerk of the Peace or his Deputy, on application of the party entitled to the costs, or of any person on his behalf and on payment of any fee to which he may be entitled, shall grant to the party so applying, a Certificate that the costs have not been paid, and upon production of the Certificate to any Justice or

Justices of the Peace for the same Territorial Division, he or they may enforce the payment of the costs by Warrant of Distress [S 1] in manner aforesaid, and in default of distress he or they may commit [S 2] the party against whom the warrant has issued in manner hereinbefore mentioned, for any time not exceeding two months, unless the amount of the costs and all costs and charges of the distress and also the costs of the commitment and conveying of the party to prison, if the Justice or Justices think fit so to order (the amount thereof being ascertained and stated in the commitment), be sooner paid.

Vide ante, s. 65, p. 230.

76. Every Justice of the Peace, shall make a return in writing under his hand of all convictions made by him to the next ensuing General or Quarter Sessions of the Peace, or to the next term or sitting of any Court having jurisdiction in appeal as hereinbefore provided, at which, in either case, the appeal can be heard, for the District or County or place in which such conviction takes place, and of the receipt and application by him of the moneys received from the Defendants (and in the case of any convictions before two or more Justices, such Justices, being present and joining therein, shall make a joint Return thereof,) in the following form :—

[illegible]

A. B. and C. D., Convicting Justices, (as the case may be.)

77. And any Justice or Justices to whom any such moneys may be afterwards paid, shall make a Return of the receipts and application thereof, to the next General or Quarter Sessions of the Peace, or other Court as aforesaid, which return shall be filed by the Clerk of the Peace, with the records of his office.

Penalty on Justices of the Peace neglecting to comply with the provisions of this Act as to returns, &c.

78. In case the Justice or Justices, before whom any such conviction takes place or who receives any such moneys, neglect or refuse to make such return thereof, or in case any such Justice or Justices wilfully make a false, partial or incorrect return, or wilfully receive a larger amount of fees than by law they are authorized to receive, such Justice or Justices, so neglecting, or refusing, or wilfully making such false, partial or incorrect return, or wilfully receiving a larger amount of fees as aforesaid, shall forfeit and pay the sum of eighty dollars, together with full costs of suit, to be recovered by any person suing for the same by action of debt or information in any Court of Record in the Province in which such Return ought to have been or is made, one moiety whereof shall be paid to the party suing, and the other moiety into the hands of Her Majesty's Receiver General to and for the public uses of the Dominion.

Actions for such penalties limited to six months after cause.

79. All prosecutions for penalties arising under the provisions of the next preceding section shall be commenced within six months next after the cause of action accrues, and the same shall be tried in the District, County or place wherein such penalties have been incurred, and if a verdict or judgment passes for the Defendant, or the Plaintiff

becomes non-suit, or discontinues the action after issue joined, or if upon demurrer, or otherwise, judgment be given against the Plaintiff, the Defendant shall recover his full costs of suit, as between Attorney and Client, and shall have the like remedy for the same, as any Defendant hath by law in other cases.

Clerk of the Peace, &c., to publish and post up the returns so made.

80. The Clerk of the Peace of the District or County in which any such returns are made or the proper officer, other than Clerk of the Peace to whom such returns are made shall, within seven days after the adjournment of the next ensuing General or Quarter Sessions, or of the term or sitting of such other Court, as aforesaid, cause the said returns to be published in one public newspaper, in the District or County, or if there be no such newspaper, then in a newspaper of an adjoining District or County, and shall also fix up in the Court House of the District or County and also in a conspicuous place, in the Office of such Clerk of the Peace, for public inspection, a Schedule of the returns so made by such Justices; and the same shall continue to be so fixed up, and exhibited until the end of the next ensuing General or Quarter Sessions of the Peace or of the term or sitting of such other Court as aforesaid, and for every Schedule so made and exhibited by the said Clerk of the

Peace, he shall be allowed the expense of publication, and such fee as may be fixed by competent authority.

Copy of returns to be sent to Minister of Finance.

81. The Clerk of the Peace or other officer as last aforesaid of each District or County, within twenty days after the end of each General or Quarter Sessions of the Peace, or the sitting of such Court as aforesaid, shall transmit to the Minister of Finance a true copy of all such returns made within his District or County.

Not to prevent prosecution of a Justice in default.

82. Nothing in the six next preceding sections shall have the effect of preventing any person aggrieved, from prosecuting by indictment, a Justice of the Peace, for any offence, the commission of which would subject him to indictment at the time of the coming into force of this Act

If the misconduct of magistrates, besides being productive of private injury, be such as to call for punishment on public grounds, as where it proceeds not from error, but from private interest or resentment, the Court of Queen's Bench or the Court in the Province occupying the position in criminal matters of the Court of Queen's Bench in England, will direct an information to be filed by the officer of the Court, upon a proper application, supported by affidavits; but an information is never granted for an irregularity arising merely from ignorance or mistake (*R. vs. Cozens, Doug. 426; R. vs. Fielding, 2 Burr, 720; R. v. Allington, 1 Str. 678; R. vs. Badger, 4 Q. B. 468; R. vs. Lovet, 7 T. R. 152; Paley 482, 483.*)

An indictment will lie in all cases in which a criminal information may be granted. So in the case of *R. vs. Borrón*, 3 B. & Ald, 434, which was an application for an information against a magistrate and refused, Abbott, C. J. in delivering the judgment of the Court said, "They (the Justices) are, indeed, like every subject of this kingdom, answerable to the law for the faithful and upright discharge of their trust and duties. But whenever they have been challenged upon this head, either by way of indictment or application to this Court for a criminal information, the question has always been, not whether the Act done might, upon full and mature investigation, be found strictly right, but from what motive it had proceeded; whether from a dishonest, oppressive or corrupt motive, under which description fear and favor may generally be included, or from mistake or error. In the former case alone, they have become the objects of punishment. To punish as a criminal any person who, in the gratuitous exercise of a public trust, may have fallen into error or mistake, belongs only to the despotic ruler of an enslaved people, and is wholly abhorrent from the jurisprudence of this kingdom."

In cases, however, where the public safety is at stake, a magistrate is punishable for gross neglect in the performance of his duties (*R. vs. Pinney*, 3 B. & Ad. 947; *Paley* 484).

In case of tender or payment of the amount of distress.

83. In all cases where a warrant of Distress has issued against any person, and such person pays or tenders to the Constable having the execution of the same, the sum or sums in the warrant mentioned, together with the amount of the expenses of the distress up to the time of

payment or tender, the Constable shall cease to execute the same.

Vide, ante p. 214.

Payment may be made to the keeper of the prison.

84. In all cases in which any person is imprisoned for non-payment of any penalty or other sum, he may pay or cause to be paid to the keeper of the prison in which he is imprisoned, the sum in the warrant of Commitment mentioned, together with the amount of the costs, charges and expenses (if any) therein also mentioned, and the keeper shall receive the same, and shall thereupon discharge the person, if he be in his custody for no other matter.

In what case one Justice may act.

85. In all cases of summary proceedings before a Justice or Justices of the Peace out of Sessions, upon any information or complaint, one Justice may receive the information or complaint, and grant a summons or warrant thereon, and issue his summons or warrant to compel the attendance of any witnesses for either party, and do all other acts and matters necessary, preliminary to the hearing, even in cases where by the statute in that behalf the information or complaint must be heard and determined by two or more Justices.

After hearing, &c.

86. After a case has been heard and determined, one Justice may issue all warrants of distress or commitment thereon.

Proceedings after judgment.

87. It shall not be necessary that the Justice who acts before or after the hearing, be the Justice or one of the Justices by whom the case is or was heard and determined.

In case two Justices are required.

88. In all cases where by any Act or Law it is required that an information or complaint shall be heard and determined by two or more Justices, or that a conviction or order shall be made by two or more Justices, such Justices must be present and acting together during the whole of the hearing and determination of the case.

Amount to be paid to party aggrieved limited.

89. When several persons join in the commission of the same offence and upon conviction thereof, each is adjudged to forfeit a sum equivalent to the value of the property, or to the amount of the injury done, no further sum shall be paid to the party aggrieved than the amount forfeited by one of such offenders only, and the corresponding sum, forfeited by the other offender, shall be applied in the same manner as other penalties imposed by a Justice or Justices of the Peace are directed to be applied.

*Vide ant. p. 193-197, as to joint offence.**Party aggrieved and certain others may be witnesses.*

90. The evidence of the party aggrieved and also the evidence of any inhabitant of the District, County or place in which any offence has been

committed, shall be admitted in proof of the offence notwithstanding that any forfeiture or penalty incurred by the offence, may be payable to any public fund of such District, County or place.

Certain magistrates to have the powers of two Justices.

91. Any one Judge of Sessions of the Peace, Recorder, Police Magistrate, District Magistrate, or Stipendiary Magistrate, appointed for any District, County, City, Borough, Town, or Place and sitting at a Police Court or other place appointed in that behalf, shall have full power to do alone whatever is authorized by this Act to be done by two or more Justices of the Peace; and the several forms hereinafter contained may be varied so far as it may be necessary to render them applicable to Police Courts, or to the Court or other place of sitting of such functionary as aforesaid.

Power to preserve order, &c.

92. Any Judge of Sessions of the Peace, Police Magistrate, District Magistrate or Stipendiary Magistrate, sitting at any Police Court or other place appointed in that behalf, shall have such and like powers and authority to preserve order in the said Courts during the holding thereof, and by the like ways and means as now by law are or may be exercised and used in like cases and for the like purposes by any Courts of Law in Canada, or by the Judges thereof respectively, during the sittings thereof.

The question of contempt of Court is one on which a very great difference of opinion exists on the bench and at the bar. The officers mentioned in this clause were sitting as therein mentioned have apparently all the powers of any of the Superior Courts of Law in Canada, whilst the Justice of the Peace is left with the powers of preserving order granted to him by the Common Law.

The safe rule to follow in all cases of breach of order, during the hearing of a case, is for the Justice to commit in writing the offender for a contempt, but the punishment should follow immediately on the commission of the offence (*vide* R. vs. Revel, 1 Str. 420; Starkie on Slander by Folkard, 622, 624, 636).

Where the defendant was indicted for saying to a justice of the Peace *in the execution of his office*, you are a rogue and a liar, it was held that an indictment lay (R. vs. Revel, *supra*).

Power to punish resistance to process, &c.

93. Any Judge of the Sessions of the Peace, Police Magistrate, District Magistrate, or Stipendiary Magistrate, in all cases where any resistance is offered to the execution of any Summons, Warrant of Execution or other process issued by him, may enforce the due execution of the same by the means provided by the law for enforcing the execution of the Process of other Courts in like cases.

Interpretation of certain words.

94. The expression "Territorial Division" whenever used in this Act, shall mean—District, County, Union of Counties, Township, City,

Town, Parish or other judicial division or place to which the context may apply; and the words "District or County" shall include any territorial or judicial division or place, in and for which there is such Judge, Justice, Justice's Court, officer or prison, as is mentioned in the context and to which the context may apply.

The same.

95. The words "Common Gaol" or "Prison," whenever they occur in this Act, shall be held to mean any place other a Penitentiary where parties charged, with offences against the law are usually kept and detained in custody.

Forms.

96. The several forms in the Schedule to this Act contained, varied to suit the case, or forms to the like effect, shall be deemed good, valid and sufficient in law.

Commencement of Act.

97. This Act shall commence and take effect on the first day of January, in the year of our Lord, one thousand eight hundred and seventy.

SCHEDULE.

(A) See s. 1.

(1) SUMMONS TO THE DEFENDANT UPON AN INFORMATION OR COMPLAINT.

Canada,
Province of ,
District (or County,
United Counties, or
as the case may be,)
of }

To A. B., of (laborer).

Whereas information hath this day been laid (or complaint hath this day been made) before the undersigned, (one) of Her Majesty's Justices of the Peace in and for the said District (or County, United Counties, City, Town, &c., as the case may be) of , for that you (here state shortly the matter of the information or complaint): These are therefore to command you, in Her Majesty's name, to be and appear on , at o'clock in the forenoon, at , before me, or such Justice or Justices of the Peace for the said District (or County, United Counties, or as the case may be,) as may then be there, to answer to the said information (or complaint), and to be further dealt with according to law.

Given under (my) hand and seal, this day of ,
in the year of our Lord , at , in the District (or
County, or as the case may be) aforesaid.

J. S. [L. S.]

(2) DEPOSITION OF CONSTABLE OR OTHER PERSON OF SERVICE OF SUMMONS (Okes Mag. For. No. 9, p. 11.)

The deposition of J. N., constable of the Parish of C., in the said (County), taken upon oath before me the undersigned, one of Her Majesty's Justices of the Peace for the said (County) of C., at N., in the same (County), this day of 187 .
who saith, that he served A. B., mentioned in the annexed (or

within) summons, with a duplicate thereof, on the day of _____ last personally (or "by leaving the same" with N. O. at the said A. B.'s usual or last place of abode at N., in the county of S.")

J. N.

Before me, J. S.

(B) See s. 6.

(3) WARRANT WHEN THE SUMMONS IS DISOBEYED.

Canada,
Province of _____,
District (or County,
United Counties, or
as the case may be,)
of _____

To all or any of the Constables or other Peace Officers in the District (or County, United Counties, or as the case may be) of _____

Whereas on _____ last past, information was laid (or complaint was made) before _____, (one) of Her Majesty's Justices of the Peace in and for the said District (or County, United Counties, or as the case may be,) of _____, for that A. B. (&c., as in the Summons): And whereas (1) the said Justice of the Peace then issued (my) Summons unto the said A. B., commanding him, in Her Majesty's name, to be and appear on _____, at _____ o'clock in the (fore) noon, at _____, before (me) or such Justice or Justices of the Peace as might then be there, to answer unto the said information (or complaint), and to be further dealt with according to law: And whereas the said A. B. hath neglected to be and appear at the time and place so appointed in and by the said Summons, although it hath now been proved to me upon oath that the said Summons hath been duly served upon the said A. B.: These are therefore to command you, in Her Majesty's name, forthwith to apprehend the said A. B., and to bring him before (me) or some one or more of Her Majesty's Justices of the Peace in and for the said District (or County, United Counties, or as the case may be,) to answer to the said information (or complaint); and to be further dealt with according to law.

Given under my hand and seal, this _____ day of _____, in the year of our Lord _____ at _____, in the District (or County, United Counties, or as the case may be) aforesaid.

J. S.

[L. s.]

(C) *See s. 6.*

(4) WARRANT IN THE FIRST INSTANCE.

Canada,
Province of
District (or County,
United Counties, or
as the case may be,)
of

To all or any of the Constables or other Peace Officers in the said District (or County, United Counties, or as the case may be,) of

Whereas information hath this day been laid before the undersigned, (one) of Her Majesty's Justices of the Peace in and for the said District (or County, United Counties, or as the case may be,) of for that A. B. (*here state shortly the matter of information*); and oath being now made before me substantiating the matter of such information: These are therefore to command you, in Her Majesty's name, forthwith to apprehend the said A. B. and to bring him before (me) or some one or more of Her Majesty's Justices of the Peace in and for the said District (or County, United Counties, or as the case may be,) to answer to the said information, and to be further dealt with according to law.

Given under my Hand and Seal, this day of in the year of our Lord , at , in the District (County, &c., as the case may be) aforesaid.

J. S. [L. S.]

(D) *See ss. 12, 22, 34, 46.*

(5) WARRANT OF COMMITTAL FOR SAFE CUSTODY DURING AN ADJOURNMENT OF THE HEARING.

Canada,
Province of
District (or County,
United Counties, or
as the case may be,)
of

To all or any of the Constables or Peace Officers in the District (or County, United Counties, or as the case may be) of

and to the Keeper of the Common Gaol (or Lock-up House) at
Whereas on last past, information was laid
(or complaint made) before , (one) of Her Majesty's

Justices of the Peace in and for the said District (or County, United Counties, or as the case may be) of _____, for that (i.e., as in the Summons); And whereas the hearing of the same is adjourned to the _____ of _____ (instant,) at _____ o'clock in the (fore) noon, at _____, and it is necessary that the said A. B. should in the meantime be kept in safe custody: These are therefore to command you, or any one of the said Constables or Peace Officers, in Her Majesty's name, forthwith to convey the said A. B. to the Common Gaol (or Lock-up House,) at _____, and there deliver him into the custody of the Keeper thereof, together with this Precept; And I hereby require you, the said Keeper, to receive the said A. B. into your custody in the said Common Gaol (or Lock-up House) and there safely keep him until the day of _____, (instant) when you are hereby required to convey and have him, the said A. B., at the time and place to which the said hearing is so adjourned as aforesaid, before such Justices of the Peace for the said District (or County, United Counties, as the case may be) as may then be there, to answer further to the said information (or complaint), and to be further dealt with according to law.

Given under my hand and seal, this _____ day of _____ in the year of our Lord _____, at _____, in the District (or County, &c., as the case may be) aforesaid.

J. S. [L. S.]

(E) See s. 12, 22, 34, 46.

(6) RECOGNIZANCE FOR THE APPEARANCE OF THE DEFENDANT WHEN THE CASE IS ADJOURNED,
OR NOT AT ONCE PROCEEDED WITH.

Canada,
Province of _____,
District (or County,
United Counties, or
as the case may be),
of _____

Be it remembered, That on _____, A. B. of _____ (laborer,) and L. M. of _____, (grocer,) and O. P. of _____ (yeoman,) personally came and appeared before the undersigned, (one) of Her Majesty's Justices of the Peace in and for the said District (or County, United Counties, or as the case may be) and severally acknowledged themselves to owe to our Sovereign Lady the Queen the several sums following, that is to say: the

said A. B. the sum of _____ and the said L. M. and O. P. the sum of _____, each, of good and lawful current money of Canada, to be made and levied of their several goods and chattels, lands and tenements respectively, to the use of our said Lady the Queen, Her Heirs and Successors, if he the said A. B. shall fail in the condition endorsed (or hereunder written.).

Taken and acknowledged the day and year first above mentioned at _____ before me.

J. S. [L. s.]

The condition of the within (or the above) written recognizance is such that if the said A. B. shall personally appear on the day of _____, (instant,) at _____ o'clock in the (fore) noon, at _____, before me or such Justices of the Peace for the said District (or County, United Counties, or as the case may be) as may then be there, to answer further to the information (or complaint) of C. D. exhibited against the said A. B. and to be further dealt with according to law, then the said recognizance to be void or else to stand in full force and virtue.

NOTICE OF SUCH RECOGNIZANCE TO BE GIVEN TO THE DEFENDANT AND HIS SURETIES.

Take notice that you, A. B., are bound in the sum of _____ and you L. M. and O. P., in the sum of _____, each, that you, A. B., appear personally on _____ at _____ o'clock in the (fore) noon at _____, before me or such Justices of the Peace for the District (or County, United Counties, or as the case may be) of _____ as shall then be there, to answer further to a certain information (or complaint) of C. D. the further hearing of which was adjourned to the said time and place, and unless you appear accordingly, the recognizance entered into by you, A. B., and by L. M. and O. P. as your sureties, will forthwith be levied on you and them.

Dated this _____ day of _____, one thousand eight hundred and _____

J. S. [L. s.]

(7) (F) See ss. 13, 23, 35, 49, 61.

CERTIFICATE OF NON-APPEARANCE TO BE ENDORSED ON THE DEFENDANT'S RECOGNIZANCE.

I hereby certify, that the said A. B. hath not appeared at the time and place in the said condition mentioned, but therein hath made default, by reason whereof the within written recognizance is forfeited.

J. S. [L. s.].

(G 1) *See s. 16.)*

(8)

SUMMONS TO A WITNESS.

Canada,
 Province of
 District (or County,
 United Counties, or
 as the case may be.)
 of

To E. F. of , in the said District (or County, United Counties, or as the case may be) of

Whereas information was laid (or complaint was made) before (one) of Her Majesty's Justices of the Peace in and for the said District (or County, United Counties, or as the case may be) of , for that (&c., as in the summons,) and it hath been made to appear to me upon (oath) that you are likely to give material evidence on behalf of the Prosecutor (or Complainant or Defendant) in this behalf; These are therefore to require you to be and appear on , at o'clock in the (fore) noon, at before me or such Justice or Justices of the

Peace for the said District (or County, United Counties, or as the case may be) as may then be there, to testify what you shall know concerning the matter of the said information (or complaint).

Given under my hand and seal, this day of in the year of our Lord , at in the District (or County, or as the case may be) aforesaid.

J. S. [L. s.]

(9) DEPOSITION THAT A PERSON IS A MATERIAL WITNESS.
 (Not in Act. Okes Mag. For. No. 19, p. 14.)

The deposition of J. N., of the parish of C., in the said County (farmer), taken on oath before me the undersigned, one of Her Majesty's Justices of the Peace, in and for the said County of C., at N., in the said County, this day of 187 , who saith that E. F., of the parish of C. aforesaid (grocer), is likely to give material evidence on behalf of the prosecution, in this behalf touching the matter of the annexed (or "within") information (or complaint); and that this deponent verily believes that the said E. F. will not appear voluntarily for the purpose of being examined as a witness (or if a warrant be granted in the first instance, without being compelled so to do).

J. N.

Before me, J. S.

(10) DEPOSITION OF CONSTABLE OR OTHER PERSON OF
SERVICE OF SUMMONS (NOT IN ACT).

Oke's For. p. 15 No. 21.

(Proceed as in form, No. 2, ante, p. 249, adding at the conclusion;
"and at the same time tendered (or paid) to the said A. B. the
sum of , for his costs and expenses in that behalf.")

(G 2) See s. 17.

(11) WARRANT WHERE A WITNESS HAS NOT OBEYED
A SUMMONS.

Canada,
Province of
District (or County,
United Counties, or
as the case may be,)
of

To all or any of the Constables and other Peace officers in the
said District (or County, United Counties, or as the case may be)
of

Whereas information was laid (or complaint was made) before
(one) of Her Majesty's Justices of the Peace, in and for the
said District (or County, United Counties, or as the case may be)
of for that (&c., as in the Summons) and it having been made
to appear to (me) upon oath, that E. F., of in the
said District (or County, United Counties, or as the case may be,
(laborer) was likely to give material evidence on behalf of the
(prosecutor or as the case may be) (I) did duly issue (my) Summons
to the said E. F., requiring him to be and appear on
at o'clock in the (fore) noon of the same day, at

, before me or such Justice or Justices of the Peace for
the said District (or County, United Counties, or as the case may
be) as might then be there, to testify what he should know con-
cerning the said A. B., or the matter of the said information (or
complaint:) And whereas proof hath this day been made before
me, upon oath, of such Summons having been duly served upon
the said E. F.; And whereas the said E. F. hath neglected to
appear at the time and place appointed by the said Summons,
and no just excuse has been offered for such neglect; These are
therefore to command you to take the said E. F., and to bring
and have him on at o'clock in the
noon, at before me or such Justice or Justices of the

Peace for the District (*or County, United Counties, or as the case may be*) as may then be there to testify what he shall know concerning the said information (*or complaint*).

Given under my hand and seal, this _____ day of _____
in the year of our Lord _____, at _____ in the District (*or County, or as the case may be*) aforesaid.

J. S. [L. S.]

(G 3) See s. 18.

(12) WARRANT FOR A WITNESS IN THE FIRST INSTANCE.

Canada,
Province of _____,
District (*or County, United Counties, or as the case may be,*)
of _____

To all or any of the Constables, or other Peace officers in the said District (*or County, United Counties, or as the case may be*) of _____

Whereas information was laid (*or complaint was made*) before the undersigned (*one*) of Her Majesty's Justices of the Peace in and for the said District (*or County, United Counties, or as the case may be*) of _____, for that (&c., *as in the Summons,*) and it being made to appear before me upon oath, that E. F., of _____

(*laborer,*) is likely to give material evidence on behalf of the (*prosecutor, or as the case may be*) in this matter, and it is probable that the said E. F., will not attend to give evidence without being compelled so to do: These are therefore to command you to bring and have the said E. F., on _____ at _____ o'clock in the (*fore*) noon, at _____, before me or such other Justice or Justices of the Peace, for the District (*or County, United Counties, or as the case may be*) as may then be there, to testify what he shall know concerning the matter of the said information (*or complaint*).

Given under (*my*) hand and seal, this _____ day of _____
in the year of Our Lord _____, at _____, in the District (*or County, or as the case may be,*) aforesaid.

J. S. [L. S.]

(G 4) See s. 19.

(13) COMMITMENT OF A WITNESS FOR REFUSING TO BE
SWORN OR GIVE EVIDENCE.

Canada,	}
Province of	
District (or County,	
United Counties, or	
as the case may be,	

of

To all or any of the Constables or other Peace Officers in the said District (or County, United Counties, or as the case may be) of and to the Keeper of the Common Gaol of the said district (or County, United Counties, or as the case may be) at

Whereas information was laid (or complaint was made) before (me) (one) of Her Majesty's Justices of the Peace, in and for the said District (or County, United Counties, or as the case may be) of for that (i.e., as in the Summons,) and one E. F., now appearing before me such Justice as aforesaid, on , at , and being required by me to make oath (or affirmation) as a witness in that behalf, hath now refused so to do, (or being now here duly sworn as a witness in the matter of the said information or complaint) doth refuse to answer a certain question concerning the premises which is now here put to him, and more particularly the following question (*here insert the exact words of the question*), without offering any just excuse for such his refusal: These are therefore to command you, or any one of the said Constables or Peace officers to take the said E. F., and him safely to convey to the Common Gaol at aforesaid, and there deliver him to the said Keeper thereof, together with this precept; and I do hereby command you the said Keeper of the said Common Gaol, to receive the said E. F., into your custody in the said Common Gaol and there imprison him for such his contempt for the space of days, unless he shall in the meantime consent to be examined and to answer concerning the premises, and for so doing, this shall be your sufficient warrant.

Given under my hand and seal, this
in the year of our Lord. , at
County, or as the case may be) aforesaid.

day of
, in the District (or

J. S. [L.S.]

(H) *See s. 33.*(14) WARRANT TO REMAND A DEFENDANT WHEN
APPREHENDED.

Canada,	}
Province of	
District (or County,	
United Counties, or	
as the case may be,) of	

To all or any of the Constables, or other Peace officers in the said District (or County, United Counties, or as the case may be) of , and to the Keeper of the Common Gaol (or Lock-up House) at

Whereas information was laid (or complaint was made) before (one) of Her Majesty's Justices of the Peace in and for the District (or County, United Counties, or as the case may be) of , for that (i.e., as in the summons or warrant); And whereas the said A. B. hath been apprehended under and by virtue of a warrant, upon such information (or complaint) and is now brought before me as such Justice as aforesaid: These are therefore to command you, or any one of the said Constables, or Peace officers, in Her Majesty's name, forthwith to convey the said A. B. to the Common Gaol (or Lock-up House) at , and there to deliver him to the said Keeper thereof, together with this Precept; And I do hereby command you the said Keeper to receive the said A. B. into your custody in the said Common Gaol (or Lock-up House,) and there safely keep him until next, the day of (instant), when you are hereby commanded to convey and have him at at o'clock in the noon of the same day, before me, or such Justice or Justices of the Peace of the said District (or County, United Counties, or as the case may be) as may then be there, to answer to the said information (or complaint,) and to be further dealt with according to law.

Given under my hand and seal, this day of , in the year of our Lord, , at in the district (or County, as the case may be) aforesaid.

J. S. (L. S.)

(15) MINUTES OF PROCEEDINGS AT THE HEARING
WITH ADJUDICATION (Not in Act. Okes Mag. For.
No. 13, p. 18.)

C. D. against A. B.

4th day of 187 , at N

Before J. T. B., clerk, and J. D. Esq., J. P.,

The Defendant appeared on a (warrant) granted by V. D. M., Esquire, J. P., charging him with assaulting and beating at L., on the instant, one C. D.

Defendant, on being asked what he has to say, pleads guilty or *not guilty* as the case may be or "complainant being sworn, says, or E. F., of , laborer, being sworn, says, or "complainant does not appear, and defendant attends with his witnesses."

Adjudications.] 1. On dismissal.—*Dismissed* with costs, viz :

Fees for summonses to two witnesses, 4s.; two witnesses' attendance, 5s.—9s. to be paid (*forthwith*) or levied by distress, or in default imprisonment for fourteen days, unless costs of distress and conveying to prison be paid.

2. Where imprisonment only. *Convicted*: To be imprisoned with hard labour or *not as the case may be*, for two calendar months. Costs, 14s. 6d., to be paid forthwith, levied by distress, and in default imprisonment for fourteen days additional, and to pay costs of commitment and conveyance to prison, 18s. 6d.

3. Where a penalty. *Convicted*: To pay penalty, 5s., damage (or "value") 1s. and costs, 14s. (Clerk's fees, 10s. 6d., Constable, 3s. 6d.), forthwith (or "on or before the 12th instant,") to be recovered by distress, and in default one calendar months' imprisonment with hard labour, or unless sooner paid, with costs of distress and conveyance to gaol.

(I 1) See ss. 42, 50.

(16) CONVICTION FOR A PENALTY TO BE LEVIED BY
DISTRESS, AND IN DEFAULT OF SUFFICIENT DISTRESS,
BY IMPRISONMENT.

Canada,	}
Province of	
District (or County,	
United Counties, or	
as the case may be),	
of	

Be it remembered, That on the _____ day of _____ in the year of our Lord, _____, at _____, in the said District (or County, United Counties, or as the case may be), A. B. is convicted before the undersigned, (one) of Her Majesty's Justices of the Peace for the said District (or County, United Counties, or as the case may be,) for that the said A. B., (&c., stating the offence, and the time and place, when and where committed,) and I adjudge the said A. B. for his said offence to forfeit and pay the sum of _____ (stating the penalty, and also the compensation, if any,) to be paid and applied according to law, and also to pay to the said C. D. the sum of _____, for his costs in this behalf; and if the said several sums be not paid forthwith or on or before the _____ of _____ next,) * I order that the same be levied by distress and sale of the goods and chattels of the said A. B., and in default of sufficient distress, * I adjudge the said A. B., to be imprisoned in the Common Gaol of the said District (or County, United Counties, or as the case may be,) at _____ in the said District (or County) of _____ (there to be kept at hard labour, if such be the sentence,) for the space of _____ unless the said several sums and all costs and charges of the said distress (and of the commitment and conveying of the said A. B. to the said Gaol) be sooner paid.

Given under (my) hand and seal, the day and year first above mentioned, at _____ in the District (or County, United Counties, or as the case may be) aforesaid.

J. S. [L. s.]

* Or when the issuing of a Distress Warrant would be ruinous to the Defendant or his family, or it appears he has no goods whereon to levy a distress, then instead of the words between the asterisks * * say, "inasmuch as it hath now been made to appear to me that the issuing of a Warrant of Distress in this behalf would be ruinous to the said A. B. or his family," (or, "that the said A. B. hath no goods or chattels whereon to levy the said sums by distress.") I adjudge, &c., (as above, to the end.)

(I 2) *See ss. 42, 50.*(17) CONVICTION FOR A PENALTY, AND IN DEFAULT OF
PAYMENT, IMPRISONMENT.

Canada,
Province of
District (or County,
United Counties, or
as the case may be,
of

Be it remembered, That on the day of , in
the year of our Lord, , at , in the said District, (or
County, United Counties, or as the case may be), A. B., is con-
victed before the undersigned, (one) of Her Majesty's Justices of
the Peace for the said District (or County, United Counties, or as
the case may be), for that he the said A. B., (*ſc.*, stating the
offence, and the time and place when and where it was committed,)
and I adjudge the said A. B., for his said offence to forfeit and
pay the sum of (*stating the penalty and the compensation, if
any*), to be paid and applied according to law; and also to pay to
the said C. D., the sum of for his costs in this behalf;
and if the said several sums be not paid forthwith (or, on or
before next), I adjudge the said A. B., to be im-
prisoned in the Common Gaol of the said District (or County,
United Counties, or as the case may be,) at in the said
District (or County) of (*and there to be kept at hard
labour*) for the space of , unless the said sums and the
costs and charges of conveying the said A. B. to the said Common
Gaol, shall be sooner paid.

Given under my hand and seal, the day and year first above
mentioned, at in the District (or County, United Counties,
or as the case may be,) aforesaid.

J. S. [L.S.]

(I 3) See ss. 42, 50.

(18) CONVICTION WHEN THE PUNISHMENT IS BY IMPRISONMENT, &c.

Canada,	}
Province of	
District (or County,	
United Counties, or	
as the case may be,) of	

Be it remembered, That on the _____ day of _____, in the year of our Lord _____, in the said District (or County, United Counties, or as the case may be,) A. B., is convicted before the undersigned (one) of Her Majesty's Justices of the Peace in and for the said District (or County, United Counties, or as the case may be), for that he the said A. B., (i.e., stating the offence and the time and place when and where it was committed); and I adjudge the said A. B., for his said offence to be imprisoned in the Common Gaol of the said District (or County, United Counties, or as the case may be,) at _____ in the County of _____ (and there to be kept at hard labour) for the space of _____; and I also adjudge the said A. B., to pay to the said C. D., the sum of _____ for his costs in this behalf, and if the said sum for costs be not paid forthwith, (or on or before _____ next,) then * I order that the said sum be levied by distress and sale of the goods and chattels of the said A. B.; and in default of sufficient distress in that behalf, * I adjudge the said A. B., to be imprisoned in the said Common Gaol, (and kept there at hard labour) for the space of _____, to commence at and from the term of his imprisonment aforesaid, unless the said sum for costs shall be sooner paid.

Given under my hand and seal, the day and year first above mentioned at _____ in the District (or County, United Counties, or as the case may be) aforesaid.

J. S. [L. S.]

* Or, when the issuing of a distress warrant would be ruinous to the Defendant and his family, or it appears that he has no goods whereon to levy a distress, then, instead of the words between the asterisks * * say, "inasmuch as it hath now been made to appear to me that the issuing of a warrant of distress in this behalf would be ruinous to the said A. B., and his family," (or, "that the said A. B., hath no goods or chattels whereon to levy the said sum for costs by distress") I adjudge, &c.

(19) CONVICTION ON VIEW OF A JUSTICE.—(Not in Act.
Oke's Mag. For. No. 43, p. 25.)

Canada,
Province of
District (or County,
United Counties, or
as the case may be,)
of

Be it remembered, that on the _____ day of _____
in the year of our Lord one thousand eight hundred and seventy,
I. G. H., Esquire, one of Her Majesty's Justices of the Peace, in
and for the said (County) of _____, personally saw A. B., of
the (Parish) of _____, in the same (County) (*here state the
offence seen committed*), contrary, &c. Whereupon it is considered
and adjudged by (me) the said justice, that the said A. B., be
convicted, and he is by me accordingly hereby convicted of his
said offence upon my own view as aforesaid, according to the form
of the Statute aforesaid in that case made and provided; and I
adjudge the said A. B. for his said offence, &c., *adjudication as in
form No. 18.*

(20) ADJUDICATION FOR A JOINT OFFENCE WHERE THE
PENALTY IS SEVERED AMONG THE DEFENDANTS.

(Not in Act. Oke's Mag. For. No. 44, p. 25.)

And I adjudge the said A. B., E. F., and G. H., for their said
offence to forfeit and pay the sum of _____, to be paid
and applied according to law, and also to pay to the said C. D.
the sum of _____ for his costs in this behalf, in the follow-
ing proportions, that is to say, the said A. B. for his said offence
the sum of _____, and the sum of _____ for costs;
and the said E. F., for his said offence the sum of _____,
and the sum of _____ for costs; and the said C. H. for his
said offence the sum of _____, and the sum of _____
for costs; and if the said several apportioned sums be not paid
forthwith (or "on or before _____ next,") by the said A. B.,
E. F. and G. H. respectively, I adjudge each of them, the said
A. B., E. F. and G. H., who shall make default in that behalf,
severally to be imprisoned in the _____ at _____
in the said (County) of _____ (and there to be kept to hard
labor) for the space of _____ (Or if imprisonment be different
to each, say: I adjudge the said A. B., E. F. and G. H. to be

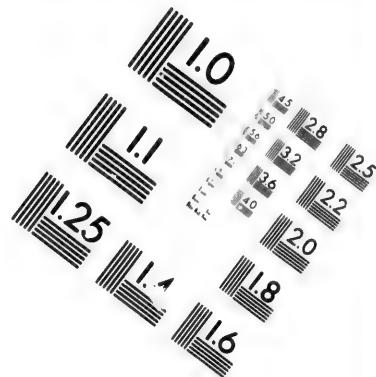
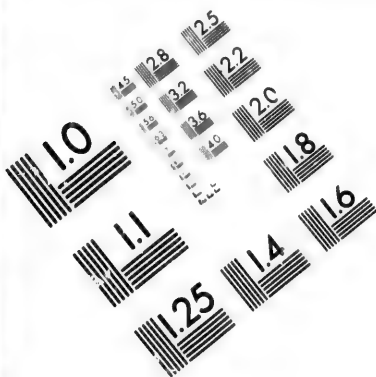
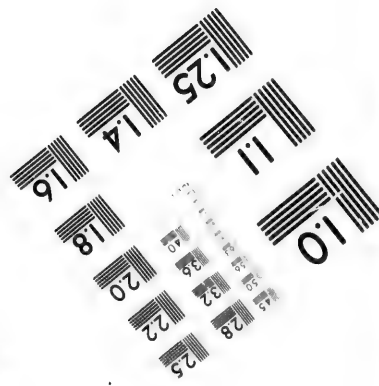
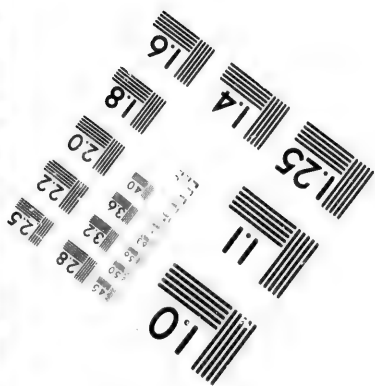
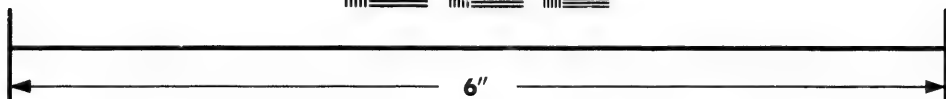
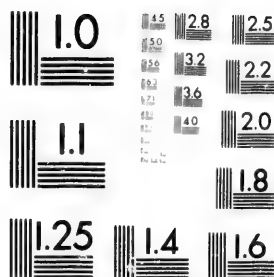


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severally imprisoned in the _____ at _____, in the said County of _____, and there severally to be kept to hard labour, for the following periods respectively, that is to say, the said A. B. for the space of _____, the said E. F., for the space of _____, and the said G. H. for the space of _____, unless the said several sums so adjudged to be paid by the person so making default (and the costs and charges of conveying such person to the common gaol) respectively, shall be sooner paid, (but not so as that either of them shall be imprisoned or kept in prison for the default of the other or others of them).

(21) ADJUDICATION UPON SEVERAL DEFENDANTS FOR A SEVERAL OFFENCE IN ONE CONVICTION, WHERE THE PENALTY IS THE SAME TO EACH. (Not in Act. Oke's Mag. For. No. 45, p. 26.)

And I adjudge each of them, the said A. B., E. F. and G. H., for his said offence, severally to forfeit and pay the sum of _____, and each of them also to pay to C. D. the sum of _____ for his costs in this behalf; and if the said several sums so to be paid by each of them aforesaid, be not paid by the said A. B., E., F. and G. H. respectively forthwith (or "on or before next,") I adjudge each of them, the said A. B., E. F. and G. H., who shall make default in that behalf, severally to be imprisoned in the _____ at _____ in the said (County) of _____ (and there to be kept to hard labour) for the space of _____, unless the said several sums so adjudged to be paid by the person so making default (and the costs and charges of conveying such person to the common gaol) respectively, shall be sooner paid, (but not so as that either of them the said A. B., E. F. and G. H. shall be imprisoned or kept in prison for the default of the other or others of them).

- (22) THE LIKE, A LONGER FORM RECOMMENDED TO BE USED WHEN THE PENALTY IMPOSED ON EACH DEFENDANT IS DIFFERENT IN AMOUNT. (Not in Act, Oke's Mag. For. No. 46, p. 26).

Canada,
Province of
District (or County,
United Counties, or
as the case may be,)
of

Be it remembered, that on the day of , in the year of our Lord , at in the said (county), A. B., E. F. and G. H. are and each of them is severally convicted before the undersigned, (who) of Her Majesty's Justices of the Peace for the said (county), for that they the said A. B., E. F. and G. H. unlawfully did (&c., stating the offence); And we adjudge the said A. B., for his said offence, to forfeit and pay the sum of , to be (respectively) paid and applied according to law, and also to pay to C. D. the sum of for his costs in respect of the said A. B. in this behalf; and if the said several sums be not paid forthwith (or "on or before the day of "), we adjudge the said A. B. to be imprisoned in the common gaol at in the said (county) of (there to be kept at hard labour) for the term of , unless the said several sums (and the costs and charges of the commitment and conveying of the said A. B. to the said common gaol) shall be sooner paid: And we adjudge the said E. F. for his said offence also to forfeit and pay (&c., as above, repeating the like adjudication against each defendant convicted).

N.B.—Where the punishment is by imprisonment and not by penalty, and the same punishment is assigned to each offender, the adjudication in the form No. 21 may adjudge all the defendants, "for their said offence to be severally imprisoned in the," &c., but the adjudication of costs in that case must, if they are ordered, be separate.

- (23) ADJUDICATION UPON SEVERAL DEFENDANTS FOR A SEVERAL OFFENCE WHERE THE PENALTY IS DIFFERENT ON EACH. (Not in Act, Oke's Mag. For. No. 47, p. 27.)

This will be precisely the same form as the one immediately preceding.

(24) CONVICTION FOR A SECOND OR SUBSEQUENT OFFENCE.
(Not in Act, Oke's Mag. For. No. 48, p. 27.)

(This will be in either of the foregoing forms of conviction, adding before the first adjudication the following averment of the previous conviction):

And whereas it is now duly proved before us the said Justices that the said A. B. was heretofore, to wit, on the day of , in the year of Our Lord , duly convicted before J. L., Esq., one of Her Majesty's Justices of the Peace in and for the said county of , for that he the said A. B. did on the day of , at the parish of , in the said county *(state the offence as in the former conviction)*, and the said A. B. was thereupon adjudged for his last mentioned offence to *(state the adjudication correctly)*: And we adjudge the said A. B. for his said *(second or third)* offence, of which he has been so convicted this day as aforesaid, to forfeit, &c., *(proceeding to the end as in the ordinary way.)*

(25) ADJUDICATION OF CONSECUTIVE IMPRISONMENT. (Not in Act, Oke's Mag. For. No. 49, p. 27.)

And I adjudge the said A. B. for his said offence, to forfeit &c., *(or to be imprisoned &c.,)* for the space of , which I hereby award and order shall commence at the expiration of a certain other term of imprisonment to which the said A. B. has been previously duly adjudged and sentenced *(by me)* for another offence upon the conviction in that behalf, *(and if in actual prison or present, add and is now undergoing in the said common gaol)*, (unless the said several sums shall be sooner paid *(if a penalty adjudged.)*)

(K 1) See ss. 42, 51.

(26) ORDER FOR PAYMENT OF MONEY TO BE LEVIED BY DISTRESS, AND IN DEFAULT OF DISTRESS, IMPRISONMENT.

Canada,	}
Province of	
District (or County,	
United Counties,) or	
as the case may be,) of	

Be it remembered, That on complaint was made before the undersigned, (one) of Her Majesty's Justices of the Peace in and for the said District (or County, United Counties, or as the case may be) of for that (*stating the facts entitling the Complainant to the order, with the time and place when and where they occurred,*) and now at this day, to wit, on at the parties aforesaid appear before me the said Justice, (or, the said C. D. appears before me the said Justice, but the said A. B. although duly called, doth not appear by himse^{lf}. his Counsel or Attorney, and it is now satisfactorily proved to me on oath that the said A. B. has been duly served with the Summons in this behalf, which required him to be and appear here on this day before me or such Justice or Justices of the Peace for the said District (or County, United Counties, or as the case may be) as should now be here, to answer the said complaint, and to be further dealt with according to law); and now having heard the matter of the said complaint, I do adjudge (*) the said A. B. (to pay to the said C. D. the said sum of forthwith, (or on or before next, or as the Act or Law may require) and also pay to the said C. D. the sum of for his costs in this behalf; and if the said several sums be not paid forthwith (or on or before next) then,* I hereby order that the same be levied by distress, and sale of the goods and chattels of the said A. B.) and in default of sufficient distress in that behalf,* I adjudge the said A. B. to be imprisoned in the Common Gaol of the said District (or County, United Counties, or as the case may be) at in the said District (or County) of , and there kept to hard labour) for the space of unless the said several sums and all costs and charges of the said distress (and of the commitment and conveying of the said A. B. to the said Common Gaol) shall be sooner paid.

(*) It would be better here to introduce the words "the said complaint to be true and I adjudge" vide *Labalmondière vs. Froste*, 25 L. J. (N.S.) M. C. 155.

Given under my hand and seal, this day of in the
year of our Lord , at in the District (or County, or
as the case may be,) aforesaid.

*Or, when the issuing of a distress warrant would be ruinous to the Defendant or his family or it appears he has no goods whereon to levy a distress, then, instead of the words between the asterisks ** say, inasmuch as it hath now been made to appear to me that the issuing of a warrant of distress in this behalf would be ruinous to the said A. B. and his family," (or, "that the said A. B. hath no goods or chattels whereon to levy the said sums by distress."*

J. S. [L. S.]

(K 2) See ss. 42, 51.

(27) ORDER FOR PAYMENT OF MONEY, AND IN DEFAULT OF
PAYMENT, IMPRISONMENT.

Canada,
Province of ,
District (or County,
United Counties, or
as the case may be),
of }

Be it remembered, That on complaint was made
before the undersigned, (one) of Her Majesty's Justices of the
Peace in and for the said District (or County, United Counties, or
as the case may be,) of , for that (stating the facts
entitling the complainant to the order, with the time and place when
and where they occurred,) and now on this day, to wit, on
 , at , the parties aforesaid appear before me the said
Justice, (or the said C. D. appears before me the said Justice, but
the said A. B. although duly called doth not appear by himself,
his Counsel or Attorney, and it is now satisfactorily proved to me
upon oath that the said A. B. has been duly served with the sum-
mons in this behalf, which required him to be and appear here this
day before me, or such Justice or Justices of the Peace for the said
District (or County, United Counties, or as the case may be,) as
should now be here, to answer to the said complaint, and to be
further dealt with according to law,) and now having heard the
matter of the said complaint. I do adjudge (†) the said A. B. (to
pay to the said C. D. the sum of forthwith, (or on or

(†) Vide ante No. 26.

before next, *or as the Act or Law may require,*)
 and also to pay to the said C. D. the sum of for his costs
 in this behalf; and if the said several sums be not paid forthwith,
 (or on or before next), then I adjudge the said A. B. to be
 imprisoned in the Common Gaol of the said District (or County,
 United Counties, *or as the case may be,*) at , in the said
 District (or County of (there to be kept at hard
 labour *if the Act or Law authorize this*) for the space of
 , unless the said several sums (and costs and charges
 of commitment and conveying the said A. B. to the said Common
 Gaol) shall be sooner paid.

Given under (my) hand and seal, this day of
 , in the year of our Lord , at
 in the District (or County, United Counties, *or as the case may
 be*) aforesaid.

J. S. [L. s.]

(K 3) ss. 42, 51.

(28) ORDER FOR ANY OTHER MATTER WHERE THE DISOBEY-
 ING OF IT IS PUNISHABLE WITH IMPRISONMENT.

Canada,
 Province of ,
 District (or County,
 United Counties, *or
 as the case may be,*
 of

Be it remembered, That on complaint was made before
 the undersigned, (one) of Her Majesty's Justices of the Peace in
 and for the said District (or County, United Counties, *or as the
 case may be,*) of , for that (stating the facts entitling
 the Complainant to the Order, with the time and place where and
 when they occurred,) and now on this day, to wit, on
 at , the parties aforesaid appear before me the said
 Justice, (or the said C. D. appears before me the said Justice, but
 the said A. B. although duly called doth not appear by himself,
 his Counsel or Attorney, and it is now satisfactorily proved to me
 upon oath that the said A. B. has been duly served with the Sum-
 mons in this behalf, which required him to be and appear here this
 day before me, or such Justice or Justices of the Peace for the said
 District (or County, United Counties, *or as the case may be,*) as
 should now be here, to answer to the said complaint, and to be
 further dealt with according to law,) and now having heard the

matter of the said complaint, I do therefore adjudge (*) the said A. B. to (*here state the matter required to be done*), and if upon a copy of the Minute of this Order being served upon the said A. B. either personally or by leaving the same for him at his last or most usual place of abode, he shall neglect or refuse to obey the same, in that case I adjudge the said A. B. for such his disobedience to be imprisoned in the Common Gaol of the said District (*or County, United Counties, or as the case may be,*) at in the said County of (there to be kept at hard labour if the Statute authorize this) for the space of unless the said order be sooner obeyed, and I do also adjudge the said A. B. to pay to the said C. D. the sum of for his costs in this behalf, and if the said sum for costs be not paid forthwith, or on or before next,) I order the same to be levied by distress and sale of the goods and chattels of the said A. B., and in default of sufficient distress in that behalf, I adjudge the said A. B. to be imprisoned in the said Common Gaol (there to be kept at hard labour) for the space of to commence at and from the termination of his imprisonment aforesaid, unless the said sum for costs shall be sooner paid.

Given under (*my*) hand and seal, this day of , in the year of our Lord , at , in the District (*or County, United Counties, or as the case may be,*) aforesaid.

J.S. [L. s.]

(L) See s. 43.

(29) ORDER OF DISMISSAL OF AN INFORMATION OR COMPLAINT.

Canada,
Province of ,
District (*or County,*
United Counties, *or*
as the case may be,)
of

Be it remembered, that on information was laid (*or complaint was made*) before the undersigned, (*one*) of Her Majesty's Justices of the Peace in and for the said District (*or County, United Counties, or as the case may be*) of , for that (*&c., as in the Summons to the Defendant,*) and now at this day, o wit, on , at , both the said parties appear

(*) *Vide ante* No. 26.

before me in order that I should hear and determine the said information (*or complaint*) (*or the said A. B. appeareth before me, but the said C. D. although duly called doth not appear,**) whereupon the matter of the said information (*or complaint*) being by me duly considered (it manifestly appears to me that the said information (*or complaint*) is not proved,) I do therefore dismiss the same, and do adjudge that the said C. D. do pay to the said A. B. the sum of _____ for his costs incurred by him in his defence in this behalf: and if the said sum for costs be not paid forthwith, (*or on or before* _____) I order that the same be levied by distress and sale of the goods and chattels of the said C. D., and in default of sufficient distress in that behalf, I adjudge the said C. D. to be imprisoned in the Common Gaol of the said District (*or County, United Counties, or as the case may be*) at _____ in the said County of _____ (and there to be kept at hard labour) for the space of _____, unless the said sum for costs and all costs and charges of the said distress (and of the commitment of the said C. D. to the said Common Gaol,) shall be sooner paid.

Given under my hand and seal, this _____ day of _____ in the year of our Lord _____, at _____, in the District (*or County, United Counties, or as the case may be*) aforesaid. J. S. [L. S.]

* *If the Informant (or Complainant) do not appear. these words may be omitted.*

(M) See s. 43.

(30)

CERTIFICATE OF DISMISSAL.

I hereby certify that an information (*or complaint*) preferred by C. D. against A. B. for that (*or as in the summons,*) was this day considered by me, one of Her Majesty's Justices of the Peace in and for the District (*or County, United Counties, or as the case may be*) of _____, and was by (me) dismissed (*with costs.*)

Dated this _____ day of _____, one thousand eight hundred and _____

J. S. [L. S.]

(31) MINUTE OF ORDER OF DISMISSAL FOR SERVICE UNDER
SECT. 54. (Not in Act, Oke's Mag. For. No. 34, p. 20.)

Venue as in (L.) No. (29) At a petty Sessions of Her Majesty's Justices of the Peace for the said County, holden at N. in and for the said Division, the 4th day of January, 187 .

C. D., Complainant

against

A. B., Defendant.

It is adjudged and ordered, that the information (*or "complaint"*) in this case for (state shortly the charge), be dismissed with costs, the complainant not appearing (*or "the said information"*) (*or "complaint not being proved"*); and that the complainant shall forthwith (*or "on or before the day of next"*) pay to the defendant the sum of nine shillings for his costs incurred in his defence, to be recovered by distress, and in default the complainant to be imprisoned for , unless sooner paid (with the costs of distress and of conveyance to gaol).

I. and B.,

Clerks to the Justices of the said Division.

(N 1) See s. 57.

(32) WARRANT OF DISTRESS UPON A CONVICTION FOR A
PENALTY.

Canada,
Province of
District (*or County*),
United Counties, *or*
as the case may be,)
of

To all or any of the Constables, or other Peace Officers in the said District (*or County, United Counties, or as the case may be*) of

Whereas A. B., late of , (*labourer*) was on this day (*or on last past*) duly convicted before (one) of Her Majesty's Justices of the Peace, in and for the said District (*or County, United Counties, or as the case may be*) of for that (*stating the offence as in the conviction*) and it was thereby adjudged that the said A. B., should for such his offence forfeit and pay, (*£c., as in the conviction*), and should also pay to the said

C. D. the sum of for his costs in that behalf; and it was thereby ordered that if the said several sums should not be paid (*forthwith*) the same should be levied by distress and sale of the goods and chattels of the said A. B.; and it was thereby ordered that if the said several sums should not be paid (*forthwith*) the same should be levied by distress and sale of the goods and chattels of the said A. B.; and it was thereby also adjudged that the said A. B., in default of sufficient distress, should be imprisoned in the Common Gaol of the said District (*or County, United Counties, or as the case may be*) at in the said County of (*and there to be kept at hard labour*) for the space of unless the said several sums and all costs and charges of the said distress, and of the commitment and conveying of the said A. B., to the said Common Gaol should be sooner paid; *And whereas the said A. B., being so convicted as aforesaid, and being (*now*) required to pay the said sums of

and hath not paid the same or any part thereof, but therein hath made defaults: These are therefore to command you, in Her Majesty's name, forthwith to make distress of the goods and chattels of the said A. B.; and if within

days next after the making of such distress, the said sums, together with the reasonable charges of taking and keeping the distress, shall not be paid, then you do sell the said goods and chattels so by you distrained, and do pay the money arising from such sale unto me (*the convicting Justice or one of the convicting Justices*) that I may pay and apply the same as by law is directed, and may render the overplus, if any, on demand, to the said A. B.; and if no such distress can be found, then, that you certify the same unto me, to the end that such further proceedings may be had thereon as to law doth appertain.

Given under my hand and seal, this day of in the year of our Lord , at in the District (*or County, or as the case may be*) aforesaid.

J. S. [L. s.]

(N 2) See s. 57.

(33) WARRANT OF DISTRESS UPON AN ORDER FOR THE PAYMENT OF MONEY.

Canada,
Province of
District (or County,
United Counties, or
as the case may be),
of

To all or any of the Constables, or other Peace Officers, in the said District (or County, United Counties, or as the case may be) of

Whereas on last past, a complaint was made before (one) of Her Majesty's Justices of the Peace in and for the said District (or County, United Counties, or as the case may be) for that (&c., as in the order,) and afterwards, to wit, on , at , the said parties appeared before (as in the order,) and thereupon the matter of the said complaint having been considered, the said A. B. was adjudged (to pay to the said C. D. the sum of on or before then next,) and also to pay to the said C. D. the sum of for his costs in that behalf; and it was ordered that if the said several sums should not be paid on or before the said then next, the same should be levied by distress and sale of the goods and chattels of the said A. B.; and it was adjudged that in default of sufficient distress in that behalf, the said A. B., should be imprisoned in the Common Gaol of the said District (or County, or United Counties, or as the case may be) at , in the said County of (and there kept at hard labour) for the space of , unless the said several sums and all costs and charges of the distress (and of the commitment and conveying of the said A. B. to the said Common Gaol) should be sooner paid;* And whereas the time in and by the said order appointed for the payment of the said several sums of and hath elapsed, but the said A. B. hath not paid the same, or any part thereof, but herein hath made default; These are therefore to command you, in Her Majesty's name, forthwith to make distress of the goods and chattels of the said A. B.; and if within the space of days after the making of such distress, the said last mentioned sums, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and do pay the money arising from

such sale unto me, (or some other of the convicting Justices, as the case may be) that I (or he) may pay and apply the same as by law directed, and may render the overplus, if any, on demand to the said A. B.; and if no such distress can be found, then that you certify the same unto me, to the end that such proceedings may be had therein, as to law doth appertain.

Given under my hand and seal, this _____ day of _____
in the year of our Lord _____, at _____, in the District
(or County, or as the case may be) aforesaid.

J. S. [L. S.]

(N 3) See s. 58.

(34) ENDORSEMENT IN BACKING A WARRANT OF DISTRESS.

Canada,
Province of _____,
District (or County, _____,
United Counties, or _____,
as the case may be,) _____
of _____

Whereas proof upon oath hath this day been made before me, one of Her Majesty's Justices of the Peace in and for the said District (or County, United Counties, or as the case may be) that the name of J. S. to the within Warrant subscribed, is of the handwriting of the Justices of the Peace within mentioned, I do therefore authorize U. T. who bringeth me this warrant, and all other persons to whom this Warrant was originally directed, or by whom the same may be lawfully executed, and also all Constables and other Peace Officers in the said District (or County, United Counties, or as the case may be,) of _____ to execute the same within the said District (or County, United Counties, or as the case may be)

Given under my hand, this _____ day of _____, one thousand _____
eight hundred and _____ O. K.

(N 4) See s. 62.

(35) CONSTABLE'S RETURN TO A WARRANT OF DISTRESS.

I, W. T., Constable of _____, in the District (or County, United Counties, or as the case may be) of _____ hereby certify to J. S., Esquire, one of Her Majesty's Justices of the Peace for

the District (or County, United Counties, or as the case may be) that by virtue of this warrant, I have made diligent search for the goods and chattels of the within mentioned A. B., and that I can find no sufficient goods or chattels of the said A. B. whereon to levy the sums within mentioned.

Witness my hand, this day of , one thousand eight hundred and

J. S. [L. S.]

(N 5) See s. 62.

(36) WARRANT OF COMMITMENT FOR WANT OF DISTRESS.

Canada, }
Province of }
District (or County, }
United Counties, or }
as the case may be), }
of }

To all or any of the Constables and other Peace Officers in the District, (or County, United Counties, or as the case may be,) of , and to the Keeper of the Common Gaol of the said District, (or County, United Counties, or as the case may be,) of , at , in the said District (or County) of :

Whereas (&c., as in either of the foregoing distress warrants, N. 1, 2, to the asterisks,* and then thus): And whereas afterwards on the day of , in the year aforesaid, I, the said Justice, issued a warrant to all or any of the Constables or other Peace Officers of the District (or County, United Counties, or as the case may be,) of commanding them, or any of them, to levy the said sums of and by distress and sale of the goods and chattels of the said A. B.; And whereas it appears to me, as well by the return to the said warrant of distress, by the Constable who had the execution of the same, as otherwise, that the said Constable hath made diligent search for the goods and chattels of the said A. B., but that no sufficient distress whereon to levy the sums above mentioned could be found: These are therefore to command you, the said Constables or Peace Officers, or any one of you, to take the said A. B., and him safely to convey to the Common Gaol at aforesaid, and there deliver him to the said Keeper, together with this Precept; and I do hereby command you, the said Keeper of the said Common Gaol, to receive the said A. B. into your custody, in the said Common Gaol, there to imprison him (and keep him at hard

labour) for the space of , unless the said several sums, and all the costs and charges of the said distress, (and of the commitment and conveying of the said A. B. to the said Common Gaol) amounting to the further sum of , shall be sooner paid unto you, the said Keeper; and for so doing, this shall be your sufficient warrant.

Given under my hand and seal, this day of , in the year of our Lord , at in the District (or County, or as the case may be) aforesaid.

J. S. [L. s.]

(O 1) See s. 59.

(37) WARRANT OF COMMITMENT UPON A CONVICTION FOR A PENALTY IN THE FIRST INSTANCE.

Canada, }
Province of , }
District (or County, }
United Counties, or }
as the case may be), }
of }

To all or any of the Constables and other Peace Officers in the said District (or County, United Counties, or as the case may be,) of , and to the Keeper of the Common Gaol of the said District (or County, United Counties, or as the case may be,) of , at in the said District (or County of :

Whereas A. B. late of (labourer,) was on this day convicted before the undersigned, (one) of Her Majesty's Justices of the Peace, in and for the said District (or County, United Counties, or as the case may be) for that (stating the offence as in the conviction,) and it was thereby adjudged that the said A. B., for his offence* should forfeit and pay the sum of (s*c.*, as in the conviction,) and should pay to the said C. D. the sum of for his costs in that behalf; and it was thereby further

adjudged that if the said several sums should not be paid (forthwith) the said A. B.* should be imprisoned in the Common Gaol of the said District (or County, United Counties, or as the case may be) at in the said District (or County) of and there kept at hard labour) for the space of ¶ unless the said several sums and the costs and charges of conveying the said A. B. to the said Common Gaol) should be sooner paid; And whereas the time in and by the said conviction appointed for the payment of the said several sums hath elapsed, but the said A.

B. hath not paid the same or any part thereof, but therein hath made default ¶; These are therefore to command you, the said Constables or Peace Officers, or any one of you, to take the said A. B., and him safely to convey to the Common Gaol at aforesaid, and there to deliver him to the said Keeper thereof, together with this Precept; and I do hereby command you, the said Keeper of the said Common Gaol, to receive the said A. B. into your custody in the said Common Gaol, there to imprison him (and keep him at hard labour) for the space of , (†) unless the said several sums (and costs and charges of carrying him to the said Common Gaol, amounting to the further sum of), shall be sooner paid unto you, the said Keeper†; and for your so doing, this shall be your sufficient warrant.

Given under (my) hand and seal, this day of in the year of our Lord , at in the District (or County, or as the case may be) aforesaid.

J. S. [L. S.]

- (38) COMMITMENT OF A DEFENDANT FOR A CONSECUTIVE PERIOD, WHERE CONVICTED THE SAME DAY OF TWO OR MORE OFFENCES, ADAPTED TO WHERE A PENALTY OR IMPRISONMENT ADJUDGED, AND WHETHER THE DEFENDANT IS IN PRISON OR IS PRESENT AT THE TIME OF CONVICTION. (Not in Act, Oke's Mag For. No. 68, p. 39.)

(Proceed as in form O, to the * where if imprisonment alone has been adjudged leave out the words between the * (asterisks); in the event of a penalty compensation and costs or any of them being adjudged leave them in. In the case of a penalty &c., being adjudged retain the words between ¶. & ¶. then proceed) which said term of imprisonment I thereby awarded and ordered should commence at the expiration of a certain other imprisonment to which the said A. B. had been previously duly adjudged and sentenced (by me) for another offence upon the conviction in that behalf, (and if in actual prison or present at conviction add, and is now undergoing,) § unless the said several sums should be sooner paid; And whereas the time in and by the said first mentioned conviction appointed for the payment of the said several sums hath elapsed and the said A. B. being now required to pay the same, hath not paid the same or

any part thereof, but therein hath made default; § (the preceding portion between § § to be omitted where imprisonment alone is adjudged by the conviction, then as in form O 1 from ¶ to ‡) which I hereby award and order shall commence at the expiration of the said other term of imprisonment above mentioned (if not in Gaol add) and to which he ‡ now stands committed under a certain other warrant delivered to you herewith marked with the letter A (placing in the case of more than two commitments the letters marked on the next previous one; but if in actual prison say in lieu of the foregoing from ‡) was committed to your custody by a certain warrant of J. S. Esquire bearing date the day of last (then as in the form O1, from ‡) to the end.)

(O 2) See s. 59.

(39) WARRANT OF COMMITMENT ON AN ORDER IN THE FIRST INSTANCE.

Canada,
Province of
District (or County,
United Counties, or
as the case may be),
of

To all or any of the Constables and other Peace Officers in the said District, (or County, United Counties, or as the case may be) of , and to the Keeper of the Common Gaol of the District, (or County, United Counties, or as the case may be) of at in the said District (or County) of

Whereas on last past, complaint was made before the undersigned, (one) of Her Majesty's Justices of the Peace in and for the said District, (or County, United Counties, or as the case may be) of for that (&c., as in the order), and afterwards, to wit, on the day of , at the parties appeared before me, the said Justice (or as it may be in the order), and thereupon having considered the matter of the complaint, I adjudged the said A. B. to pay to the said C. D. the sum of on or before the day of then next, and also to pay to the said C. D. the sum of for his costs in that behalf; and I also thereby adjudged that if the said several sums should not be paid on or before the day of

then next, the said A. B. should be imprisoned in the Common Gaol of the District (or County, United Counties, or as the case may be) of at in the said County of (and there be kept at hard labour) for the space of unless the said several sums (and the costs and charges of conveying, the said A. B. to the said Common Gaol, (as the case may be) should be sooner paid; And whereas the time in and by the said order appointed for the payment of the said several sums of money hath elapsed but the said A. B. hath not paid the same or any part thereof, but therein hath made default; These are therefore to command you, the said Constables and Peace Officers, or any of you, to take the said A. B. and him safely to convey to the said Common Gaol, at aforesaid, and there to deliver him to the Keeper thereof, together with this Precept; and I do hereby command you, the said Keeper of the said Common Gaol, to receive the said A. B. into your custody in the said Common Gaol, there to imprison him (and keep him at hard labour) for the space of , unless the said several sums (and the costs and charges of conveying him to the said Common Gaol, amounting to the further sum of), shall be sooner paid unto you the said Keeper; and for your so doing, this shall be your sufficient Warrant.

Given under my hand and seal, this day of
in the year of our Lord at , in the District
(or County, or as the case may be) aforesaid.

J. S. [L. S.]

(Q 2) See s. 64.

(40) WARRANT OF DISTRESS FOR COSTS UPON AN ORDER
FOR DISMISSAL OF AN INFORMATION OR COMPLAINT.

Canada,
Province of ,
District (or County,
United Counties, or
as the case may be,)
of

To all or any of the Constables or other Peace Officers, in the said District (or County, United Counties, or as the case may be,) of

Whereas on last past, information was laid (or complaint was made) before (one) of Her Majesty's Justices of the Peace in and for the said District (or County, United

Counties, or as the case may be) of _____ for that (i.e., as in the order of dismissal,) and afterwards, to wit, on _____ at _____, both parties appearing before _____ in order that (I) should hear and determine the same, and the several proofs adduced to (me) in that behalf being by (me) duly heard and considered, and it manifestly appearing to (me) that the said information (or complaint) was not proved, (I) therefore dismissed the same and adjudged that the said C. D. should pay to the said A. B. the sum of _____ for his costs incurred by him in his defence in that behalf; and (I) ordered that if the said sum for costs should not be paid (forthwith) the same should be levied on the goods and chattels of the said C. D., and (I) adjudged that in default of sufficient distress in that behalf the said C. D. should be imprisoned in the Common Gaol of the said District (or County, United Counties, or as the case may be) of _____ at _____ in the said District or County of _____ (and there kept at hard labour) for the space of _____, unless the said sum for costs, and all costs and charges of the said distress, and of the commitment and conveying of the said A. B. to the said Common Gaol should be sooner paid; * And whereas the said C. D. being now required to pay to the said A. B. the said sum for costs, hath not paid the same, or any part thereof, but therein hath made default: These are therefore to command you, in Her Majesty's name, forthwith, to make distress of the goods and chattels of the said C. D., and if within the space of _____ days next after the making of such distress, the said last mentioned sum, together with the reasonable charges of taking and keeping the said distress, shall not be paid, then that you do sell the said goods and chattels so by you distrained, and do pay the money arising from such sale to me (the Justice who made such order or dismissal as the case may be) that (I) may pay and apply the same as by law directed, and may render the overplus (if any) on demand to the said C. D., and if no such distress can be found, then that you certify the same unto me, (or any other Justice of the Peace for the same District (or County, United Counties, or as the case may be) to the end that such proceedings may be had therein as to law doth appertain.

Given under (my) hand and seal, this _____ day of _____, at _____, in the year of our Lord _____, in the District (or County, or as the case may be) aforesaid.

J. S. [L. s.]

(Q 2) See s. 64.

(41) WARRANT FOR COMMITMENT FOR WANT OF DISTRESS IN
THE LAST CASE.

Canada,	}
Province of	
District (or County,	
United Counties, or	
as the case may be,) of	

To all or any of the Constables or Peace Officers in the said District (or County, United Counties, or as the case may be) of , and to the Keeper of the Common Gaol of the said District (or County, United Counties, or as the case may be) of at in the said District (or County) of

Whereas (&c., as in the last form, to the asterisk, * and then thus:) And whereas afterwards, on the day of , in the year aforesaid, I, the said Justice, issued a warrant to all or any of the said Constables or other Peace Officers of the said District (or County, United Counties, or as the case may be) commanding them, or any of them to levy the said sum of

for costs, by distress and sale of the goods and chattels of the said C. D.; And whereas it appears to me, as well by the return to the said warrant of distress of the Constable (or Peace Officer) charged with the execution of the same, as otherwise, that the said Constable hath made diligent search for the goods and chattels of the said C. D. but that no sufficient distress whereon to levy the sum above mentioned could be found; These are therefore to command you, the said Constables and Peace Officers, or any one of you, to take the said C. D. and him safely convey to the Common Gaol of the said District (or County. United Counties, or as the case may be,) at aforesaid, and there deliver him to the Keeper thereof, together with this Precept; and I hereby command you, the said Keeper of the said Common Gaol, to receive the said C. D. into your custody in the said Common Gaol, there to imprison him (and keep him at hard labour) for the space of unless the said sum, and all the costs and charges of the said distress (and of the commitment and conveying of the said C. D. to the said Common Gaol amounting to the further sum of ,) shall be sooner paid up unto you the said Keeper; and for your so doing, this shall be your sufficient warrant.

Given under my hand and seal, this day of , in the year of our Lord , at , in the District (or County, or as the case may be) aforesaid.

J. S. [L S.]

(42) JUDGMENT OF AFFIRMANCE OF THE SESSIONS ON AN
APPEAL FROM A CONVICTION. (Not in Statute, *Vide*
Paley on Con. 5 Ed. p. 546.)

Canada,
Province of
District (or County,
United Counties, or
as the case may be,)
or

At a General Quarter Sessions of the Peace of our Sovereign
Lady the Queen held by Proclamation at in and for
the District (or County, &c., as the case may be) of on the
day of in the year of Our Lord 187 before
Esquire, Judge of the Sessions of the Peace in and for the
City of (or as the case may be); and afterwards by
adjournment (if adjourned) at aforesaid on the
day of in the year aforesaid.

At the same Court so held at aforesaid, on the day
and year, first (or last as the case may be) aforesaid, J. W. of
in the District of (farmer,) entered his appeal to and
against a conviction under the hand and seal of C. D. Esquire, one
of Her Majesty's Justices of the Peace for the District aforesaid,
dated and made the day of 187 (here state
the offence as in the conviction) and by which said conviction he the
said C. D. did adjudge that the said J. W. should for the said offence
forfeit (here state the adjudication as in the conviction).

Now therefore at the said Court so holden as aforesaid, by
adjournment at as aforesaid, upon hearing of the said
appeal, it is now here ordered and adjudged by the said Court that
the said conviction be and the same is hereby *in all things
affirmed; and it also now here by the same Court further ordered
and adjudged that the said J. W. be dealt with and punished
according to the said conviction and also that the said J. W. do
and shall pay to the Clerk of the Peace in and for the said District
of within days of the date of the present
judgment, to be by him paid to the said Informant the Respon-
dent in the said Appeal, the sum of the amount of costs
sustained by the said Respondent and by him incurred by reason
of the said Appeal, and now by the said Court here adjudged to be
paid to him by the said J. W. according to the Statute in such
case made and provided.

(43) JUDGMENT OF SESSIONS ON APPEAL QUASHING CONVICTION.

*As in form preceding No. 42 to * then quashed and set aside with costs (where deposit has been made) and that the deposit made by the said Appellant be repaid to him by J. S. Esquire, with whom the same was made and further that the said D. E. the Respondent in the said Appeal, shall pay to the Clerk of the Peace in and for the said District of within days of the date of the present judgment to be by him paid to the said Appellant the sum of the amount of costs sustained by the said Appellant and by him incurred by reason of the said Appeal and now by the said Court here adjudged to be paid to him by the said D. E., according to the Statute in such case made and provided.*

(R) See s. 75.

(44) CERTIFICATE OF CLERK OF THE PEACE THAT THE COSTS OF AN APPEAL ARE NOT PAID.

Office of the Clerk of the Peace for the District (or County, United Counties, or as the case may be) of

TITLES OF THE APPEAL.

I hereby certify, that at a Court of General or Quarter Sessions of the Peace (or other Court discharging the functions of the Court of General or Quarter Sessions, as the case may be) holden at in and for the said District (or County, United Counties, or as the case may be) on last past, an appeal by A. B. against a conviction (or order) of J. S. Esquire, one of Her Majesty's Justices of the Peace in and for the said District (or County, United Counties, or as the case may be) came on to be tried, and was there heard and determined, and the said Court of General or Quarter Sessions (or other Court, as the case may be), thereupon ordered that the said conviction (or order) should be confirmed (or quashed) and that the said (Appellant) should pay to the said (Respondent) the sum of for his costs incurred by him in the said appeal, and which sum was thereby ordered to be paid to the Clerk of the Peace for the said District (or County, United Counties, or as the case may be) on or before the day of instant, to be by him handed over to the said (Respondent), and I further certify that the said sum for costs has not, nor has any part thereof, been paid in obedience to the said order.

Dated this day of , one thousand eight hundred and G. H.

Clerk of the Peace.

(S 1) See s. 75.)

(45) WARRANT OF DISTRESS FOR COSTS OF AN APPEAL
AGAINST A CONVICTION OR ORDER.

Canada,	}
Province of	
District (or County,	
United Counties, or	
as the case may be,) of	

To all or any of the Constables or other Peace Officers in the said District (or County, United Counties, or as the case may be) of

Whereas (&c., as in the warrants of distress, N 1, 2, ante, and to the end of the Statement of the Conviction or Order, and then thus): And whereas the said A. B. appealed to the Court of General Quarter Sessions of the Peace (or other Court discharging the functions of the Court of General or Quarter Sessions, as the case may be) for the said District (or County, United Counties, or as the case may be) against the said Conviction or Order, in which appeal the said A. B. was Appellant, and the said C. D., (or J. S. Esquire, the Justice of the Peace who made the said Conviction or Order) was the Respondent, and which said appeal came on to be tried and was heard and determined at the last General Quarter Sessions of the Peace (or other Court, as the case may be) for the said District (or County, United Counties, or as the case may be) holden at

, on

, and the said Court thereupon ordered that the said Conviction (or Order) should be confirmed (or quashed) and that the said (Appellant) should pay to the said (Respondent) the sum of

for his costs incurred by him in the said appeal, which said sum was to be paid to the Clerk of the Peace for the said District (or County, United Counties, or as the case may be) on or before the day of

, one thousand eight hundred and

, to be by him handed over to the said C. D.; and whereas the Clerk of the Peace of the said District (or County, United Counties, or as the case may be) hath, on the day of

instant, duly certified, that the said sum for costs had not been paid; * These are therefore to command you, in Her Majesty's name, forthwith to make distress of the goods and chattels of the said A. B., and if within the space of days next after the making of such distress, the said last mentioned sum, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and do pay the money arising from such sale to the Clerk of the Peace for the

said District (or County, United Counties, or as the case may be) of
 , that he may pay and apply the same as by law
 directed; and if no such distress can be found, then that you
 certify the same unto me or any other Justice of the Peace for the
 same District (or County, United Counties, or as the case may be)
 to the end that such proceedings may be had therein, as to law
 doth appertain.

Given under my hand and seal, this day of
 , in the year of our Lord , at , in the
 District (or County or as the case may be) aforesaid.

O. K. [L. S.]

(S 2) See s. 75.

(46) WARRANT OF COMMITMENT FOR WANT OF DISTRESS
 IN THE LAST CASE.

Canada,
 Province of
 District (or County,
 United Counties, or
 as the case may be,)
 of

To all or any of the Constables, or other Peace Officers, in the said
 District (or County, United Counties, or as the case may be) of
 and to the Keeper of the Common Gaol of the said Dis-
 trict (or County, United Counties, or as the case may be) of
 at , in the said County of :

Whereas (ſc., as in the last form, to the asterisk,* and then thus):
 And whereas, afterwards, on the day of
 in the year aforesaid, I, the undersigned, issued a warrant to all
 or any of the Constables and other Peace Officers in the said
 District (or County, United Counties, or as the case may be) of

, commanding them or any of them, to levy the said sum of
 , for costs, by distress and sale of the goods and chattels
 of the said A. B.; And whereas it appears to me, as well by
 the return to the said Warrant of Distress to the Constable (or
 Peace Officer), who was charged with the execution of the
 same, as otherwise, that the said Constable hath made diligent
 search for the goods and chattels of the said A. B., but that no
 sufficient distress whereon to levy the said sum above mentioned
 could be found; These are therefore to command you, the said
 Constables or Peace Officers, or any one of you, to take the said
 A. B., and him safely to convey to the Common Gaol of the said

District (or County, United Counties of *as the case may be*), at *aforsaid*, and there deliver him to the said keeper thereof, together with this Precept; and I do hereby command you, the said Keeper of the said Common Gaol, to receive the said A. B. into your custody in the said Common Gaol, there to imprison him (*and keep him at hard labour*), for the space of *), unless the same sum and all costs and charges of the said distress (and for the commitment and conveying of the said A. B. to the said Common Gaol, amounting to the further sum of* *), shall be sooner paid unto you, the said Keeper, and for so doing, this shall be your sufficient Warrant.*

Given under my hand and seal, this *day of*
in the year of our Lord *at* *in the District*
(*County, United Counties, or as the case may be*) *aforsaid.*

J. N. [L. S.]

T.

(47) GENERAL FORM OF INFORMATION OR OF COMPLAINT ON OATH.

Canada,
Province of *,*
District (or County,
United Counties, or
as the case may be),
of

The information (or complaint) of C. D., of the township of
in the said District (or County, United Counties, or *as the case may be*), of *(laborer)*. (*If preferred by an Attorney or Agent, say:*) "D. E.) his duly authorized Agent (or Attorney), in this behalf, taken upon oath, before me, the undersigned, one of Her Majesty's Justices of the Peace, in and for the said District (or County, United Counties, or *as the case may be*) of
at N., in the said District, County, or *as the case may be*) of
this *day of* *in the year of our*
Lord, one thousand eight hundred and *who saith* that*
he hath just cause to suspect and believe, and doth suspect and believe that) A. B., of the (*township*) of *in the said*
District (or County, *as the case may be*) of *within the*
space of *the time within which the information (or complaint) must be laid,*) last past, to wit, on the *day of*
instant, at the (*township*) of *in the District*
(*County, or as the case may be*) *aforsaid, did (here set out the offence,*

(*etc.*) contrary to the form of Statute in such case made and provided.

C. D. (or D. E.)

Taken and sworn before me, the day and year and at the place above mentioned. J. S.

(48) FORM OF ORDER OF DISMISSAL OF AN INFORMATION OR COMPLAINT.

Canada,
Province of
District (or County,
United Counties, or
as the case may be,)
of

Be it remembered, that on _____ information was laid (or complaint was made) before the undersigned, (one) of Her Majesty's Justices of the Peace in and for the said District (or County, United Counties, or as the case may be) of _____, for that _____ (*etc.*, as in the *Summons of the defendant*) and now at this day, to wit, on _____, at _____, (*if any adjournment insert here*: "To which day the hearing of this case hath been duly adjourned, of which the said C. D. had due notice," both the said parties appear before me in order that I should hear and determine the said information, (or complaint) (or the said A. B. appeareth before me, but the said C. D., although duly called, doth not appear); whereupon the matter of the said information (or complaint) being by me duly considered, (it manifestly appears to me that the said information (or complaint) is not proved, and (*If the Informant (or Complainant) do not appear these words may be omitted*) I do therefore dismiss the same, (and do adjudge that the said C. D. do pay to the said A. B. the sum of _____ for his costs incurred by him in defence in his behalf; and if the said sum for costs be not paid forthwith, (or on or before _____), I order that the same be levied by distress and sale of the goods and chattels of the said C. D. and in default of sufficient distress in that behalf, I adjudge the said C. D. to be imprisoned in the Common Gaol of the said District (or County, United Counties, as the case may be) of _____ at _____ in the said (County) of _____ (and there kept at hard labour for the space _____, unless the said sum for costs, and all costs and charges of the said distress (and of the commitment and conveying of the said C. D. to the said Common Gaol) shall be sooner paid.

Given under my hand and seal, this _____ day of _____ in the year of our Lord, _____ at _____ in the District (or County, or as the case may be) aforesaid.

J. S. [L. S.]

(48) FORM OF CERTIFICATE OF DISMISSAL.

I hereby certify, that an information (or complaint) preferred by D. D. against A. B. for that (i.e., as in the *Summons*) was this day considered by me, one of Her Majesty's Justices of the Peace in and for the said District (or County, United Counties, or as the case may be) of _____, and was by me dismissed (with costs),

Dated this _____ day of _____, one thousand

J. S.

(49) GENERAL FORM OF NOTICE OF APPEAL AGAINST A
CONVICTION OR ORDER.

To C. D. of, &c., and _____ (the names and additions of the parties to whom the notice of appeal is required to be given.)

Take notice, that I, the undersigned A. B., of _____ do intend to enter and prosecute an appeal at the next General Quarter Sessions of the Peace (or other Court as the case may be,) to be holden at _____, in and for the District (or County, United Counties, or as the case may be,) _____, against a certain conviction (or order) bearing date on or about the _____ day of _____ instant, and made by (you) C. D., Esquire, (one) of Her Majesty's Justices of the Peace for the said District (or County, United Counties, or as the case may be,) of _____ whereby the said A. B., was convicted of having (or was ordered to pay) _____, (here state the offence as in the conviction, information or summons or the amount adjudged to be paid as correctly as possible.)

Dated this _____ day of _____, one thousand eight hundred and _____

A. B.

MEM.—If this notice be given by several of Defendants, or by an Attorney, it can easily be adapted to the special case.

(50) FORM OF RECOGNIZANCE TO TRY THE APPEAL, &c.

Be it remembered, that on _____, A. B., of _____ (labourer,) and L. M., of _____ (grocer) and N. O., of _____ (yeoman,) personally came before the undersigned, (one) of Her Majesty's Justices of the Peace in and for the said District (or County United Counties, or as the case may be,) of _____, and severally acknowledged themselves to owe to our Sovereign Lady the

T

Queen, the several sums following, that is to say, the said A. B. the sum of , and the said L. M. and N. O. the sum of , each, of good and lawful money of Canada, to be made and levied of their several goods and chattels, lands and tenements respectively, to the use of our said Lady the Queen, Her Heirs and Successors, if he the said A. B. shall fail in the condition endorsed.

Taken and acknowledged the day and year first above mentioned at , before me.

J. S.

The condition of the within written Recognizance is such, that if the said A. B. shall, at the (*next*) General or Quarter Sessions of the Peace, (*or other Court discharging the functions of the Court of General or Quarter Sessions, as the case may be*) to be holden at , on the day of next, in and for the said District (*or County, United Counties, or as the case may be,*) of , enter and prosecute an appeal against a certain conviction bearing date the day of instant, and made by (*me*) the said Justice, whereby he the said A. B. was convicted, for that he the said A. B. did on the day of , at the township of , in the said District or County, United Counties, *or as the case may be,* of , (*here set out the offence as stated in the conviction ;*) And further, that if the said A. B. shall abide by and duly perform the order of the Court to be made upon the trial of such appeal, then the said Recognizance to be void, or else to remain in full force and virtue.

(51) FORM OF NOTICE OF SUCH RECOGNIZANCE TO BE GIVEN TO DEFENDANT (APPELLANT) AND HIS SURETIES.

Take notice, that you, A. B., are bound in the sum of , and you, L. M. and N. O. in the sum of each, that you the said A. B. at the next General or Quarter Sessions of the Peace to be holden at , in and for the said District (*or County, United Counties, or as the case may be,*) of , enter and prosecute an Appeal against a conviction (*or order*) dated the day of (*instant,*) whereby you, A. B. were convicted of (*or ordered &c.,*) (*stating offence or the subject of the order shortly*), and abide by and perform the Order of the Court to be made upon the trial of such Appeal; and unless you the said A. B. prosecute such Appeal accordingly, the Recognizance entered into by you will forthwith be levied on you, and each of you.

Dated this day of one thousand eight hundred and

SURETIES.

(52) COMPLAINT BY THE PARTY THREATENED, FOR
SURETIES FOR THE PEACE.

*Proceed as in the form (T) to the asterisk *, then : that A. B. of the (Township) of , in the District (County, or as the case may be,) of , did, on the day of (instant) or last past, as the case may be, threaten the said C. D. in the words or to the effect following, that is to say, (set them out, with the circumstance under which they were used :) and that from the above and other threats used by the said A. B. towards the said C. D., he the said C. D. is afraid that the said A. B. will do him some bodily injury, and therefore prays that the said A. B. may be required to find sufficient Sureties to keep the peace and be of good behaviour towards him the said C. D.; and the said C. D. also saith that he doth not make this complaint against nor require such Sureties from the said A. B. from any malice or ill-will, but merely for the preservation of his person from injury.*

(53) FORM OF RECOGNIZANCE FOR THE SESSIONS.

Be it remembered, that on the day of in the year of our Lord , A. B. of (labourer), L. M. of (grocer), and N. O. of (butcher), personally came before (us) the undersigned, (two) of Her Majesty's Justices of the Peace for the said District (or County, United Counties, or as the case may be,) of and severally acknowledged themselves to owe to our Lady the Queen the several sums following, that is to say; the said A. B. the sum of , and the said L. M. and N. O. the sum of , each, of good and lawful money of Canada, to be made and levied of their goods and chattels, lands and tenements respectively, to the use of our said Lady the Queen, Her Heirs and Successors, if he the said A. B. fail in the condition endorsed.

Taken and acknowledged the day and year first above mentioned, at , before us.

J. S.

J. T.

The condition of the within written Recognizance is such, that if the within bounded A.B. (of, &c.) shall appear at the next Court of General or Quarter Sessions of the Peace (or other Court discharging the functions of the Court of General or Quarter Sessions, as the

case may be,) to be holden in and for the said District (or County, United Counties, or as the case may be) of

, to do and receive what shall be then and there enjoined him by the Court, and in the meantime shall keep the peace and be of good behaviour towards Her Majesty and all Her liege people, and especially towards C. D. (of &c.) for the term of now next ensuing, then the said Recognizance to be void, or else to stand in full force and virtue.

(54) FORM OF COMMITMENT IN DEFAULT OF SURETIES.

Canada,
Province of ,
District (or County,
United Counties, or
as the case may be),
of

To all or any of the Constables or other Peace Officers in the District (or County) (or one of the United Counties, or as the case may be) of and to the Keeper of the Common Gaol of the said District, (County or United Counties, or as the case may be) at , in the said District (or County, &c.,

Whereas on the day of instant, complaint on oath was made before the undersigned (or J. L., Esquire, (one) of Her Majesty's Justices of the Peace in and for the said District (or County, United Counties, or as the case may be) of by C. D. of the township of , in the said District (County, or as the case may be) (labourer,) that A. B. of, &c., on the day of , at the township of aforesaid, did threaten (i.e., follow to end of complaint, as in form above, in the past tense, then): And whereas the said A. B. was this day brought and appeared before the said Justice (or J. L., Esquire. one of Her Majesty's Justices of the Peace in and for the said District (or County, United Counties, or as the case may be) of to answer unto the said complaint: And* having been required by me to enter into his own Recognizance in the sum of with two sufficient sureties in the sum of each, as well for his appearance at the next General or Quarter Sessions of the Peace, (or other Court discharging the functions of the Court of General or Quarter Sessions of the Peace as the case may be,) to be held in and for the said District (or County, United Counties, or as the case may be,) of , to do what shall be then and there enjoined him by the Court: as also in the meantime to keep the Peace and

be of good behaviour towards Her Majesty and Her liege people and especially towards the said C. D., hath refused and neglected and still refuses and neglects to find such sureties); These are therefore to command you and each of you to take the said A. B., and him safely to convey to the (*Common Gaol*) at aforesaid, and there to deliver him to the Keeper thereof, together with this Precept; And I do hereby command you the said Keeper of the (*Common Gaol*) to receive the said A. B. into your custody, in the said (*Common Gaol*), there to imprison him until the said next General or Quarter Sessions of the Peace (*or the next term or sitting, the said Court discharging the functions of the Court of General or Quarter Sessions, as the case may be,*) unless he, in the meantime, find sufficient sureties as well for his appearance at the said Sessions (*or Court*), as in the meantime to keep the peace as aforesaid.

Given under my hand and seal, this
in the year of Our Lord , at
(*or County, or as the case may be*) aforesaid.

day of
in the District

J. S. [L. S.]

CAP. XXXII.

An Act respecting the prompt and summary administration of Criminal Justice in certain cases.

[Assented to 22nd June, 1869.]

Preamble.

HER Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

*Interpretation of words, &c., "A Competent Magistrate."
"Common Gaol, &c."*

1. In this Act the expression "a Competent Magistrate" shall as respects the Province of Quebec and the Province of Ontario, mean and include any Recorder, Judge of a County Court, being a Justice of the Peace, Commissioner of Police, Judge of the Sessions of the Peace, Police Magistrate, District Magistrate or other functionary or tribunal invested at the time of the passing of this Act with the powers vested in a Recorder by chapter one hundred and five of the Consolidated Statutes of Canada, intituled: "*An Act respecting the prompt and summary administration of Criminal Justice in certain cases,*" and acting within the local limits of his or of its jurisdiction, and any functionary or tribunal invested by the proper leg is

tive authority with power to do alone such acts as are usually required to be done by two or more Justices of the Peace; and as respects the Province of Nova Scotia or the Province of New Brunswick, the said expression shall mean and include a Commissioner of Police and any functionary, tribunal or person invested or to be invested by the proper legislative authority with power to do alone such acts as are usually required to be done by two or more Justices of the Peace, and the expression "the Magistrate" shall mean a competent Magistrate as above defined;

And the expression "the Common Gaol or other place of confinement," shall in the case of any offender whose age at the time of his conviction does not in the opinion of the Magistrate exceed sixteen years, include any Reformatory Prison provided for the reception of juvenile offenders in the Province in which the conviction referred to takes place, and to which by the law of that Province the offender can be sent.

Power to a competent Magistrate to try certain offences in a summary way by consent of the party accused.

Larceny.

Attempt at larceny.

Assault.

Assault on females or children.

On Magistrates, &c.

Houses of ill-fame and (see Sec. 15) as to cities.

2. Where any person is charged before a competent Magistrate with having committed—

1. Simple larceny, larceny from the person, embezzlement, or obtaining money or property by false pretences, or feloniously receiving stolen property, and the value of the whole of the property alleged to have been stolen, embezzled, obtained, or received does not in the judgment of the Magistrate exceed ten dollars ; or,

2. With having attempted to commit larceny from the person or simple larceny, or,

3. With having committed an aggravated assault, by unlawfully and maliciously inflicting upon any other person, either with or without a weapon or instrument, any grievous bodily harm, or by unlawfully and maliciously cutting, stabbing or wounding any other person ; or,

4. With having committed an assault upon any female whatever, or upon any male child whose age does not in the opinion of the Magistrate exceed fourteen years, such assault being of a nature which cannot in the opinion of the Magistrate be sufficiently punished by a summary conviction before him under any other Act, and such assault, if upon a female, not amounting in his opinion to an assault with intent to commit a rape ; or,

5. With having assaulted obstructed, molested or hindered any magistrate, bailiff, or constable or officer of customs or excise or other officer in the lawful performance of his duty, or with intent to prevent the performance thereof ; or,

6. With keeping or being an inmate, or habitual frequenter of any disorderly house, house of ill-fame or bawdy house ;—

The Magistrate may, subject to the provisions hereinafter made, hear and determine the charge in a summary way.

The Magistrate in all cases mentioned in this section should proceed with respect to the reception of the charge and the issue of the summons or warrant, as directed by the 32 & 33 Vic. c. 30, ss. 1 & 2 ante pp. 52-58 and only on the bringing of the person charged, or his appearance before him should he if he thinks it a proper case for a summary trial proceed as pointed out in the next section.

Accused to be asked if he consents to be tried summarily.

If he consents, or the jurisdiction is absolute.

3. Whenever the Magistrate before whom any person is charged as aforesaid proposes to dispose of the case summarily under the provisions of this Act, such Magistrate after ascertaining the nature and extent of the charge, but before the formal examination of the witnesses for the prosecution, and before calling on the party charged for any statement which he may wish to make, shall state to such person the substance of the charge against him, and (if the charge is not one that can be tried summarily without the consent of the accused) shall then say to him, these words, or words to the like effect: "Do you consent that the charge against you shall be tried by me, or do you desire that it shall be sent for trial by a jury at the (*naming the Court at which it could soonest be tried*) ;

and if the person charged consents to the charge being summarily tried and determined as aforesaid, or if the power of the Magistrate to try it does not depend on the consent of the accused, the Magistrate shall reduce the charge into writing, and read the same to such person and shall then ask him whether he is guilty or not of such charge.

If he admits the charge.

If not.

And if he has a defence.

4. If the person charged confesses the charge the Magistrate shall then proceed to pass such sentence upon him as may by law be passed, (subject to the provisions of this Act,) in respect to such offence; but if the person charged says that he is not guilty, the Magistrate shall then examine the witnesses for the prosecution, and when the examination has been completed, the Magistrate shall inquire of the person charged whether he has any defence to make to such charge, and if he states that he has a defence, the Magistrate shall hear such defence, and shall then proceed to dispose of the case summarily.

It is not necessary to obtain the consent of the accused.
1st. When the charge against him is of being the keeper, or an inmate or an habitual frequenter of any disorderly house, house of ill-fame or bawdy house. 2nd. When he is a sea-faring person and only transiently in Canada having no domicile therein and is charged with any of the offences

enumerated in the second section as having been committed either within the City of Quebec as limited for the purpose of the Police Ordinance, or within the City of Montreal as so limited, or in any other seaport, City or Town in Canada, where there is a competent Magistrate. 3rd. When the complainant in any of the charges enumerated in the second section is a sea-faring person only transiently in Canada and having no domicile therein and whose testimony is essential to the proof of the offence. (Vide s. 16).

Persons who are charged with having committed or having attempted to commit simple larceny, or any offence punishable as simple larceny and whose age at the period of the commission or attempted commission of such offence does not in the opinion of the Justice before whom he is brought, or appears, to answer such charge exceed the age of sixteen years cannot be tried under this Act. (Vide s. 31 *post* & 32 & 33 Vic. c. 33, s. 2, *post* p. 316.)

Sentence in case of conviction of larceny.

5. In the case of larceny, feloniously receiving stolen property or attempt to commit larceny from the person, or simple larceny, charged under the first or second sub-sections of the second section of this Act, if the Magistrate after hearing the whole case for the prosecution and for the defence, finds the charge proved, then he shall convict the person charged and commit him to the Common Gaol or other place of confinement, there to be imprisoned, with or without hard labour, for any period not exceeding six months.

Offence not proved.

6. If in any case the Magistrate finds the offence

not proved, he shall dismiss the charge, and make out and deliver to the person charged a certificate under his hand stating the facts of such dismissal.

Form of conviction.

7. Every such conviction and certificate respectively may be in the forms A and B, in this Act, or to the like effect.

If the accused does not consent, or the Magistrate thinks the case proper to be otherwise tried.

8. If (when his consent is necessary) the person charged does not consent to have the case heard and determined by the Magistrate, or in any case if it appears to the Magistrate that the offence is one which, owing to a previous conviction of the person charged, or from any other circumstances, ought to be made the subject of prosecution by indictment rather than to be disposed of summarily, such Magistrate shall deal with the case in all respects as if this Act had not been passed; but a previous conviction shall not prevent the Magistrate from trying the offender summarily, if he thinks fit so to do.

Discharge in certain cases.

9. If upon the hearing of the charge the Magistrate is of opinion that there are circumstances in the case which render it inexpedient to inflict any punishment, he may dismiss the person charged without proceeding to a conviction.

If the value of the property exceeds \$10 and the Magistrate thinks the case one to be tried summarily.

10. Where any person is charged before a com-

petent Magistrate with simple larceny, or with having obtained property by false pretences, or with having embezzled or having feloniously received stolen property, or with committing larceny from the person, or with larceny as a clerk or servant, and the value of the property stolen, obtained, embezzled, or received exceeds ten dollars, and the evidence in support of the prosecution is in the opinion of the Magistrate sufficient to put the person on his trial for the offence charged, such Magistrate, if the case appear to him to be one which may properly be disposed of in a summary way, and may be adequately punished by virtue of the powers of this Act, shall reduce the charge into writing and shall read it to the said person, and (unless such person is one who can be tried summarily without his consent) shall then put to him the question mentioned in section three, and shall explain to him that he is not obliged to plead or answer before such Magistrate at all, and that if he do not plead or answer before him, he will be committed for trial in the usual course.

If the offender consents and pleads guilty.

11. If the person so charged consents to be tried by the Magistrate, the Magistrate shall then ask him whether he is guilty or not of the charge, and if such person says he is guilty, the Magistrate shall thereupon cause a plea of guilty upon the proceedings, and shall convict him of the offence,

and commit him to the Common Gaol or other place of confinement, there to be imprisoned, with or without hard labour, for any term not exceeding twelve months, and every such conviction may be in the form C, or to the like effect.

The tenth and eleventh sections only apply where the party cannot refuse or consents to be tried and also pleads guilty. If after he consents to be tried by the Magistrate he pleads not guilty, the Magistrate under this Act cannot proceed with the trial but must either commit or bind over the accused for trial at the Court at which the offence can soonest be tried.

It is doubtful whether under this clause there is any absolute jurisdiction, the necessity for the consent being done away with only as regards sea-faring persons, as mentioned ante p. 298, accused of any of the offences mentioned in the second section of this Act and persons who have been complained of by such sea-faring persons (whose evidence moreover is essential to the proof of the offence) as having committed any of the offences specified in the said second section.

Full defence allowed.

12. In every case of summary proceedings under this Act, the person accused shall be allowed to make his full answer and defence, and to have all witnesses examined and cross-examined, by counsel or attorney.

The proceedings in all cases under this Act, so far as the right to be assisted by counsel or attorney is concerned, are assimilated to those had at the Quarter Sessions in the case of indictable offences of the same class.

Power to summon and compel attendance of witnesses.

13. The Magistrate before whom any person is

charged under this Act, may by summons require the attendance of any person as a witness upon the hearing of the case at a time and place to be named in such summons, and such Magistrate may bind by recognizance all persons whom he may consider necessary to be examined touching the matter of such charge, to attend at the time and place to be appointed by him, and then and there to give evidence upon the hearing of such charge; And in case any person so summoned or required or bound as aforesaid, neglects or refuses to attend in pursuance of such summons or recognizance, then upon proof being first made of such persons having been duly summoned as hereinafter mentioned, or bound by recognizance as aforesaid, the Magistrate before whom such person ought to have attended may issue a warrant to compel his appearance as a witness.

There is no provision in this Act requiring an affidavit for the issue of the summons to a witness, as in the 32 & 33 Vic. c. 30, s. 25 (vide ante p. 73), nor is there any necessity for any proof of the person summoned being a material witness ere issuing a warrant on his default to appear in pursuance of such summons or of the recognizance entered into by him.

Mode of summoning under this Act.

14. Every summons issued under this Act may be served by delivering a copy of the summons to the party summoned, or by delivering a copy of the summons to some inmate of such party's usual

place of abode; and every person so required by any writing under the hand of any competent Magistrate to attend and give evidence as aforesaid, shall be deemed to have been duly summoned.

The mode of service pointed out by this Act differs from that under the 32 & 33 Vic. c. 30, and 32 & 33 Vic. c. 31, as under those Acts, the service can be either personal or on some person for the party summoned at his last or most usual place of abode. (Vide ante pp. 74 & 167.)

Jurisdiction of Magistrate absolute in certain cases.

15. The jurisdiction of the Magistrate in the case of any person charged within the Police limits of any city in Canada, with therein keeping or being an inmate or an habitual frequenter of any disorderly house, house of ill-fame or bawdy-house, shall be absolute, and shall not depend on the consent of the party charged to be tried by such Magistrate, nor shall such party be asked whether he consents to be so tried; nor shall this Act affect the absolute summary jurisdiction given to any Justice or Justices of the Peace in any case, by any other Act.

And as to certain persons.

16. The jurisdiction of the Magistrate shall also be absolute in the case of any person, being a seafaring person and only transiently in Canada, and having no permanent domicile therein, charged, either within the City of Quebec as limited for the purpose of the Police Ordinance, or within

the City of Montreal as so limited, or in any other Seaport, City or Town in Canada, where there is a competent Magistrate, with the commission therein of any of the offences mentioned in the second section of this Act, and also in the case of any other person charged with any such offence on the complaint of any such sea-faring person whose testimony is essential to the proof of the offence, and such jurisdiction shall not depend on the consent of any such party to be tried by the Magistrate, nor shall such party be asked whether he consents to be so tried.

Sentence on parties convicted of certain offences.

Levying any fine imposed.

17. In any case summarily tried under the third, fourth, fifth, or sixth sub-section of the second section of this Act, if the Magistrate finds the charge proved, he may convict the person charged and commit him to the Common Gaol or other place of confinement, there to be imprisoned with or without hard labour for any period not exceeding six months, or may condemn him to pay a fine not exceeding, with the costs in the case, one hundred dollars, or to both fine and imprisonment, not exceeding the said period and sum; and such fine may be levied by warrant of distress under the hand and seal of the Magistrate, or the party convicted may be condemned (in addition to any other imprisonment on the same conviction) to be committed to the Common Gaol or other place of

confinement, for a further period not exceeding six months, unless such fine be sooner paid.

Forms in cases under this Act.

18. Whenever the nature of the case requires it, the forms given at the end of this Act shall be altered by omitting the words stating the consent of the party to be tried before the Magistrate, and by adding the requisite words stating the fine imposed (if any) and the imprisonment (if any) to which the party convicted is to be subjected if the fine be not sooner paid.

Persons brought before J. P's may be remanded for trial under this Act.

19. Where any person is charged before any Justice or Justices of the Peace, with any offence mentioned in this Act, and in the opinion of such Justice or Justices, the case is proper to be disposed of by a competent Magistrate, as herein provided, the Justice or Justices before whom such person is so charged may, if he or they see fit, remand such person for further examination before the nearest competent Magistrate, in like manner in all respects as a Justice or Justices are authorized to remand a party accused for trial at any Court, under any general Act respecting the duties of Justices of the Peace out of Sessions, in like cases.

But not into any other Province.

20. No Justice or Justices of the Peace in any Province, shall so remand any person for further

examination or trial before any such Magistrate in any other Province.

Before whom to be tried.

21. Any person so remanded for further examination before a competent Magistrate in any City, may be examined and dealt with by any other competent Magistrate in the same City.

Party not appearing according to his recognizance.

22. If any person suffered to go at large upon entering into such recognizance as the Justice or Justices are authorized under any such Act as last mentioned to take, on the remand of a party accused, conditioned for his appearance before a competent Magistrate under the preceding sections of this Act, does not afterwards appear pursuant to such recognizance, then the Magistrate before whom he ought to have appeared shall certify (under his hand on the back of the recognizance, (to the Clerk of the Peace of the District, County or place (as the case may be) the fact of such non-appearance, and such recognizance shall be proceeded upon in like manner as other recognizances, and such certificate shall be deemed sufficient *prima facie* evidence of such non-appearance.

Conviction to be transmitted to Q. S., &c.

23. The Magistrate adjudicating under this Act shall transmit the conviction, or a duplicate of a certificate of dismissal, with the written charge, the depositions of witnesses for the prosecution

and for the defence, and the statement of the accused, to the next Court of General or Quarter Sessions of the Peace, or to the Court discharging the functions of a Court of General or Quarter Sessions of the Peace, for the District, County or Place, there to be kept by the proper Officer among the Records of the Court.

Proof of conviction or dismissal.

24. A copy of such conviction, or of such certificate of dismissal, certified by the proper Officer of the Court, or proved to be a true copy, shall be sufficient evidence to prove a conviction or dismissal for the offence mentioned therein, in any legal proceedings whatever.

Restitution of property.

25. The Magistrate, by whom any person has been convicted under this Act, may order restitution of the property stolen, or taken or obtained by false pretences, in those cases in which the Court before whom the person convicted would have been tried but for this Act, might by law order restitution.

The 32 & 33 Vic. c. 29, contains the following provisions on the subject of the restitution of property stolen, embezzled, &c.

s. 113. "If any person, guilty of any such felony or misdemeanor as is mentioned in this Act, in stealing, taking, obtaining, extorting, embezzling, appropriating converting or disposing of, or in knowingly receiving any chattel, money, valuable security, or other property whatsoever, is indicted for such offence, by or on behalf of the owner of the pro-

"party, or his executor or administrator, and convicted thereof, in such case the property shall be restored to the owner or his representative; and in every case in this section aforesaid the Court before whom any person is tried for any such felony or misdemeanor shall have power to award, from time to time, writs of restitution for the said property or to order the restitution thereof in a summary manner; and the Court may also, if it see fit, award restitution of the property taken from the prosecutor, or any witness for the prosecution, by such felony or misdemeanor, although the person indicted is not convicted thereof, if the jury declare (as they may do) that such property belongs to such prosecutor or witness, and that he was unlawfully deprived of it by such felony or misdemeanor; Provided that if it appears before any award or order made, that any valuable security has been *bonâ fide* paid or discharged by some person or body corporate liable to the payment thereof, or being a negotiable instrument, has been *bonâ fide* taken or received by transfer or delivery, by some person or body corporate, for a just and valuable consideration, without any notice or without any reasonable cause to suspect that the same had by any felony or misdemeanor been stolen, taken, obtained, extorted, embezzled, converted or disposed of, in such case the Court shall not award or order the restitution of such security; Provided also, that nothing in this section contained shall apply to the case of any prosecution of any trustee, banker, merchant, attorney, factor, broker, or other agent intrusted with the possession of goods or documents of title to goods, for any misdemeanor against this Act."

s. 114. "When any prisoner has been convicted, either summarily or otherwise, of any larceny or other offence, inclu-

“ding the stealing or unlawfully obtaining any property, and
“it appears to the Court, by the evidence, that the prisoner
“sold such property or part of it to any person who had no
“knowledge that it was stolen or unlawfully obtained, and
“that money had been taken from the prisoner on his apprehension, the Court may, on the application of such purchaser and on restitution of the property to its owner, order
“that out of the money so taken from the prisoner, a sum
“not exceeding the amount of the proceeds of the sale be
“delivered to such purchaser.”

Magistrate's Court to be open.

26. Every Court held by a competent Magistrate for the purposes of this Act, shall be an open public Court, and a written or printed notice of the day and hour for holding such Court, shall be posted or affixed by the Clerk of the Court upon the outside of some conspicuous part of the building or place where the same is held.

Certain provisions not to apply to cases under this Act.

27. The provisions of the Act respecting the duties of Justices of the Peace out of Sessions, in relation to summary convictions and orders, and the provisions of the Act respecting the duties of Justices of the Peace out of Sessions in relation to persons charged with indictable offences, shall not be construed as applying to any proceeding under this Act except as mentioned in section nineteen.

Effect of conviction.

28. Every conviction by a competent Magistrate under this Act shall have the same effect as a conviction upon indictment for the same offence

would have had, save that no conviction under this Act shall be attended with forfeiture beyond the penalty (if any) imposed in the case.

And of dismissal.

29. Every person who obtains a certificate of dismissal or is convicted under this Act, shall be released from all further or other criminal proceedings for the same cause.

No conviction to be quashed for want of form, &c.

30. No conviction, sentence or proceeding under this Act shall be quashed for want of form ; and no warrant of commitment upon a conviction shall be held void by reason of any defect therein, if it be therein alleged that the offender has been convicted, and there be a good and valid conviction to sustain the same.

Act not to affect that for trial of Juvenile Offenders.

31. Nothing in this Act shall affect the provisions of the *Act respecting the Trial and Punishment of Juvenile Offenders* ; and this Act shall not extend to persons punishable under that Act, so far as regards offences for which such persons may be punished thereunder.

How fines under this Act shall be applied.

32. Every fine imposed under the authority of this Act shall be paid to the Magistrate, who has imposed the same, or to the Clerk of the Court or Clerk of the Peace, as the case may be, and shall be by him paid over to the County Treasurer for county purposes if it has been imposed in the

Province of Ontario—and if it has been imposed in any new district in the Province of Quebec, constituted by any Act of the Legislature of the late Province of Canada, passed in or after the year one thousand eight hundred and fifty-seven, then to the Sheriff of such District as Treasurer of the Building and Jury Fund for such District to form part of the said Fund,—and if it has been imposed in any other District in the said Province, then to the Prothonotary of such District, to be by him applied under the direction of the Lieutenant Governor in Council, towards the keeping in repair of the Court House in such District, or to be by him added to the moneys and fees collected by him for the erection of a Court House and Gaol in such District, so long as such fees shall be collected to defray the cost of such erection; And in the Province of Nova Scotia to the County Treasurer for County purposes, and in the Province of New Brunswick to the County Treasurer for County purposes.

Interpretation of certain words.

33. In the interpretation of this Act the word “property” shall be construed to include everything included under the same word or the expression “valuable security,” as used in the *Act respecting Larceny and other similar offences*; and in the case of any “valuable security,” the value thereof shall be reckoned in the manner prescribed in the said Act.

Con. Stat. Can., Cap. 105 repealed.

Exception.

34. The Act cited in the first section of this Act chapter one hundred and five of the Consolidated Statutes of Canada is hereby repealed, except as to cases pending under it at the time of the coming into force of this Act and as to all sentences pronounced and punishments awarded under it, as regards all which this Act shall be construed as a re-enactment of the said Act, with amendments, and not a new law.

Commencement of this Act.

35. This Act shall commence and take effect on the first day of January, in the year of our Lord one thousand eight hundred and seventy.

FORM (A) *See s. 7.*

CONVICTION.

Province of City or
as the case may be of, to wit: }

Be it remembered that on the day of
in the year of our Lord , at ; A. B.,
being charged before me the undersigned , of the
said (City,) (and consenting to my deciding upon the charge summarily,) is convicted before me, for that he the said A. B., &c.,
(stating the offence, and the time and place when and where committed,) and I adjudge the said A. B., for his said offence, to be imprisoned in the
(and there kept to hard labour) for the space of

Given under my hand and seal, the day and year first above mentioned, at aforesaid.

J. S. [L. s.]

FORM (B) *See s. 7.*

CERTIFICATE OF DISMISSAL.

Province of City or
as the case may be of, to wit: }

I, the undersigned, , of the City or
as the case may be, of , certify that on the day of
 in the year of our Lord , at
 aforesaid, A. B., being charged before me (and consenting to my
 deciding upon the charge summarily), for that he the said A. B.,
 &c., (*stating the offence charged, and the time and place when and where
 alleged to have been committed,*) I did, after having summarily
 adjudicated thereon, dismiss the said charge.

Given under my hand and seal, this
 day of , at aforesaid.

J. S. [L. S.]

FORM (C) *See s. 11.*

CONVICTION UPON A PLEA OF GUILTY.

Province of City or
as the case may be of, to wit: }

Be it remembered that on the day of
 in the year of our Lord , at A. B.,
 being charged before me the undersigned , of
 the said City, (and consenting to my deciding upon the charge
 summarily, for that he the said A. B., &c., (*stating the offence, and
 the time and place when and where committed,*) and pleading guilty to
 such charge, he is thereupon convicted before me of the said
 offence; and I adjudge him the said A. B. for his said offence, to
 be imprisoned in the (and there kept at hard labour) for
 the space of)

Given under my hand and seal, the day and year first above
 mentioned, at aforesaid.

J. S. [L. S.]

CAP. XXXIII.

An Act respecting the trial and punishment of Juvenile Offenders.

[Assented to 22nd June, 1869.]

Preamble.

HER Majesty by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows :

Interpretation of certain expressions.

1. In this Act the expression "any two or more Justices," shall as respects the Province of Quebec, include any two or more Justices of the Peace, the Sheriff of any District except Montreal and Quebec, the Deputy Sheriff of Gaspé, and any Recorder, Judge of the Sessions of the Peace, Police Magistrate, District Magistrate or Stipendiary Magistrate acting within the limits of their respective jurisdictions ;—and as respects the Province of Ontario, any Judge of the County Court being a Justice of the Peace, Police Magistrate or Stipendiary Magistrate, or any two Justices of the Peace, acting within their respective jurisdictions ;—and as respects the Province of Nova Scotia or the Province of New Brunswick, the said expression shall mean and include any func-

tionary or tribunal invested or to be invested by the proper legislative authority with power to do acts usually required to be done by two or more Justices of the Peace;—and the expression “the Justices” shall have the same meaning as the expression “two or more Justices of the Peace” as above defined; and the expression “the Common Gaol or other place of confinement” shall include any Reformatory Prison provided for the reception of juvenile offenders in the Province in which the conviction referred to takes place, and to which by the law of that Province the offender can be sent.

Persons not more than sixteen years of age may be summarily convicted of certain offences before two Justices.

2. Every person charged with having committed or having attempted to commit, or having been an aider, abettor, counsellor or procurer in the commission of any offence which is simple larceny, or punishable as simple larceny, and whose age at the period of the commission or attempted commission of such offence does not, in the opinion of the Justice before whom he is brought or appears as mentioned in section seven, exceed the age of sixteen years, shall upon conviction thereof, in open Court, upon his own confession or upon proof, before any two or more Justices, be committed to the Common Gaol or other place of confinement within the jurisdiction of such Justices, there to be imprisoned with or

without hard labour, for any term not exceeding three months, or, in the discretion of such Justices, shall forfeit and pay such sum, not exceeding twenty dollars, as the said Justices may adjudge.

All persons whose age at the period of the commission or attempted commission of the offence, shall not in the opinion of the Justice before whom he is brought or appears, exceed sixteen years can be tried under this Act for the commission of the following offences:

1. Simple larceny.
2. Attempt to commit simple larceny.
- 3- Aiding, abetting, counselling or procuring the commission of simple larceny.
4. Committing any offence declared to be punishable as simple larceny.

(Vide these offences in note A iufra.)

5. Attempting to commit any offence declared to be punishable as simple larceny.

6. Aiding, abetting, counselling or procuring the commission of any offence declared to be punishable as simple larceny.

In the Province of Quebec in the event of any person apparently under the age of sixteen years being convicted before a Judge of the Sessions of the Peace, Recorder, District or Police Magistrate of any offence for which he would be

A. Offences referred to in No. 4, supra.

Besides the offence of Simple Larceny and those numbered above 2, 3, 5, the offences referred to in number 4, appear to be those declared by the 32 & 33 Vic., c. 21, ss. 14, 20, 21, 22 (on third conviction), 26 (on second conviction), 110, 111, to be punishable as Simple Larceny.

liable to imprisonment, he may be sentenced on such conviction to be detained in a certified Reformatory School for any term not less than two years nor more than five years, or to such imprisonment in a certified Reformatory School after an imprisonment under this section in a Common Gaol. (Vide 32 & 33 Vic. c.34, s. 2).

Defendant to be asked if he consents to be so tried.

And if he does not consent.

3. The Justices before whom any person is charged and proceeded against under this Act, before such person is asked whether he has any cause to shew why he should not be convicted, shall say to the person so charged, these words, or words to the like affect :

"We shall have to hear what you wish to say
"in answer to the charge against you ; but if you
"wish to be tried by a Jury, you must object now
"to our deciding upon it at once :"

And if such person, or a parent or guardian of such person, then objects, such person shall be dealt with as if this Act had not been passed ; but nothing in this Act shall prevent the summary conviction of any such person before one or more Justices of the Peace, for any offence for which he is liable to be so convicted under any other Act.

For cases wherein a person can be summarily convicted without his consent. Vide 32 & 33 Vic. c. 32, ss. 15 & 16 ante pp. 304, 305 & 298.

Case dismissed if offence is not proved, &c.

Form of certificate in such case.

4. If the Justices, upon the hearing of any such case, deem the offence not proved, or that it is not expedient to inflict any punishment, they shall dismiss the party charged, in the latter case on his finding sureties for his future good behaviour, and in the former case without sureties, and then make out and deliver to the party charged, a certificate under the hands of such Justices stating the fact of such dismissal.

Such certificate shall be in the form or to the effect set forth in the form following :

To wit: , } We , one of Her
 } Majesty's Justices of the Peace
for the , of , (or if a Recorder,
&c.,) I, a , of the
of , as the case may be) do hereby
certify, that on the day of ,
in the year of our Lord, , at ,
in the said of , M. N.,
was brought before us the said Justices (or me the
said) charged with the following
offence, that is to say (*here state briefly the particulars of the charge*), and that we the said Justices
(or I the said) thereupon dismissed the
said charge.

Given under our hands (or my hand) this
day of

Justices may send case to be tried by a Jury, if they see fit.

5. If the Justices are of opinion, before the person charged has made his defence, that the charge is from any circumstance a fit subject for prosecution by indictment, or if the person charged upon being called upon to answer the charge, objects to the case being summarily disposed of under the provisions of this Act such Justices shall, instead of summarily adjudicating thereupon deal with the case in all respects as if this Act, had not been passed; but this shall not prevent his being afterwards tried summarily by his own consent by a Judge of a County Court in the Province of Ontario, under any Act then in force for that purpose.

No further prosecution for the same offence.

6. Every person obtaining such certificate of dismissal as aforesaid, and every person convicted under the authority of this Act, shall be released from all further or other criminal proceedings for the same cause.

Compelling party accused to attend.

7. In case any person whose age is alleged not to exceed sixteen years be charged with any offence mentioned in section two, on the oath of a credible witness before any Justice of the Peace, such Justice may issue his summons or warrant, to summon or to apprehend the person so charged, to appear before any two Justices of the Peace, at a time and place to be named in such summons or warrant.

Power to remand or take bail.

8. Any Justice or Justices of the Peace, if he or they think fit, may remand for further examination or for trial, or suffer to go at large upon his finding sufficient sureties, any such person charged before him or them with any such offence as aforesaid.

Condition of recognizance.

9. Every such surety shall be bound by recognizance to be conditioned for the appearance of such person before the same or some other Justice or Justices of the Peace for further examination, or for trial before two or more Justices of the Peace as aforesaid or for trial by indictment at the proper Court of Criminal Jurisdiction, as the case may be.

Enlarging or discharging recognizance.

10. Every such recognizance may be enlarged from time to time by any such Justice or Justices or Court to such further time as he or they appoint; and every such recognizance not so enlarged shall be discharged without fee or reward when the party has appeared according to the condition thereof.

Summoning witnesses.

11. Any Justice of the Peace may, by summons, require the attendance of any person as a witness upon the hearing of any case before two Justices under the authority of this Act, at a time and place to be named in such summons.

Binding witnesses over.

12. Any such Justice may require and bind by recognizance all persons whom he considers necessary to be examined touching the matter of such charge, to attend at the time and place appointed by him, and then and there to give evidence upon the hearing of such charge.

Compelling attendance in case of refusal.

13. In case any person so summoned or required or bound as aforesaid, neglects or refuses to attend in pursuance of such summons or recognizance, then upon proof being first given of such person having been duly summoned as hereinafter mentioned or bound by recognizance as aforesaid, either of the Justices before whom any such person ought to have attended, may issue a warrant to compel his appearance as a witness.

Summons to witness how served.

14. Every summons issued under the authority of this Act, may be served by delivering a copy thereof to the party, or to some inmate at such party's usual place of abode, and every person so required by any writing under the hand or hands of any Justice or Justices to attend and give evidence as aforesaid, shall be deemed to have been duly summoned.

Form of conviction.

15. The Justices before whom any person is summarily convicted of any such offence as hereinbefore mentioned, may cause the conviction to

be drawn up in the following form, or in any other form of words to the same effect, (varying the wording to suit the case,) that is to say :

To wit : , } Be it remembered that on the
 } day of , in the year of our
 Lord one thousand eight hundred and , at
 , in the District of ,
 (County or United Counties. &c., or as the case may
 be) A. O. is convicted before us J. P. and J. R.,
 two of Her Majesty's Justices of the Peace for the
 said District (or City, &c.,) or me, S. J., Recorder,
 &c., , of the of
 or as the case may be) for that he the said A. O. did
 (specify the offence and the time and place when and
 where the same was committed, as the case may be, but
 without setting forth the evidence), and we the said
 J. P. and J. R. (or I the said S. J.) adjudge the
 said A. O. for his said offence to be imprisoned in
 the (or to be imprisoned in the
 and there kept at hard labour, for the
 space of , (or we (or I) adjudge the
 said A. O. for his said offence to forfeit and pay
 , (here state the penalty actually imposed,)
 and in default of immediate payment of the said
 sum, to be imprisoned in the (or to
 be imprisoned in the , and kept to
 hard labour) for the space of , unless
 the said sum shall be sooner paid.

Given under our hands and seals (or my hand
 and seal) the day and year first above mentioned

And the conviction shall be good and effectual to all intents and purposes.

Vide as to Statement of Offence under 32 and 33 Vic. c. 31 ante p.p 184-200.

Conviction not void for want of form.

No certiorari.

16. No such conviction shall be quashed for want of form, or be removed by *certiorari* or otherwise, into any of Her Majesty's Superior Courts of Record, and no warrant of commitment shall be held void by reason of any defect therein, provided it be therein alleged that the party has been convicted, and there is a good and valid conviction to sustain the same.

Vide ante pp. 234, 235.

Convictions to be sent to the Clerks of the Peace, &c.

17. The Justices before whom any person is convicted under the provisions of this Act, shall forthwith transmit the conviction and recognizances to the Clerk of the Peace for the district, city, county or union of counties wherein the offence was committed, there to be kept by the proper officer among the records of the Court of General or Quarter Sessions of the Peace, or of any other Court discharging the functions of a Court of General or Quarter Sessions of the Peace.

Returns to Secretary of State.

18. Each such Clerk of the Peace shall transmit to the Secretary of State of Canada, a quarterly return of the names, offences and punishments

mentioned in the convictions, with such other particulars as may from time to time be required.

No forfeiture, but restitution may be ordered.

19. No conviction under the authority of this Act shall be attended with any forfeiture, except such penalty as may be imposed by the sentence, but whenever any person is adjudged guilty under the provisions of this Act, the presiding Justice may order restitution of the property in respect of which the offence was committed, to the owner thereof or his representatives.

Vide as to Restitution ante.

Or the payment of value in money.

20. If such property be not then forthcoming, the Justices, whether they award punishment or dismiss the complaint, may inquire into and ascertain the value thereof in money, and if they think proper, order payment of such sum of money to the true owner, by the person convicted, either at one time or by instalments, at such periods as the Court deems reasonable.

This section and the nineteenth are contradictory in their provisions, under the nineteenth it is only when the accused is adjudged guilty that restitution can be ordered, but under this clause if the complaint is dismissed it is impossible that the accused be considered convicted, and yet when the complaint is dismissed the Justices can order payment of a sum representing the property by the person convicted.

Recovery of such value.

21. The party so ordered to pay may be sued

for the same as a debt in any Court in which debts of the like amount may be by law recovered, with costs of suit, according to the practice of such Court.

Enforcing payment of penalties.

22. Whenever the Justices adjudge any offender to forfeit and pay a pecuniary penalty under the authority of this Act, and such penalty is not forthwith paid, they may if they deem it expedient, appoint some future day for the payment thereof, and order the offender to be detained in safe custody until the day so to be appointed, unless such offender gives security to the satisfaction of the Justices for his appearance on such day, and the Justices may take such security by way of recognizance or otherwise at their discretion.

Committal for non-payment.

23. If at any time so appointed such penalty has not been paid, the same or any other Justices of the Peace may, by Warrant under their hands and seals, commit the offender to the Common Goal or other place of confinement within their jurisdiction, there to remain for any time not exceeding three months, reckoned from the day of such adjudication; such imprisonment to cease on payment of the said penalty.

Costs of prosecution may be awarded.

24. The Justices before whom any person is prosecuted or tried for any offence cognizable under this Act, may, in their discretion, at the

request of the prosecutor or of any other person who appears on recognizance or summons to prosecute or give evidence against such person, order payment to the prosecutor and witnesses for the prosecution, of such sums of money as to them seem reasonable and sufficient, to reimburse such prosecutor and witnesses for the expenses they have severally incurred in attending before them, and in otherwise carrying on such prosecution, and also to compensate them for their trouble and loss of time therein, and may order payment to the Constables and other Peace Officers for the apprehension and detention of any person so charged.

Even without conviction.

25. And although no conviction takes place, the said Justices may order all or any of the payments aforesaid, when they are of opinion that the parties or any of them have acted *bond fide*.

The payment of the monies so ordered, should be made by the Officer in each Territorial Division to whom fines imposed under the authority of this Act are required to be paid over in the District, City, County or Union of Counties in which the offence was committed or is supposed to have been committed. (*Vide* s. 28 post). It is to be remembered however that the sum total of costs charges and expenses attending any prosecution cannot exceed eight dollars. (*Vide* s. 27 post).

To whom and for what purpose fines shall be paid over.

26. Every fine imposed under the authority of this Act shall be paid to the Justices who impose

the same, or to the Clerk of the Recorder's Court, or the Clerk of the County Court, or the Clerk of the Peace, or other proper officer, as the case may be, and shall be by him or them paid over to the County Treasurer for County purposes, if the same was imposed in the Province of Ontario; and if it was imposed in any new district in the Province of Quebec, then to the Sheriff of such district as Treasurer of the Building and Jury Fund for such district, to form part of the said Fund, and if it was imposed in any other district in the Province of Quebec, then to the Prothonotary of such district, to be by him applied, under the direction of the Lieutenant Governor in Council, towards the keeping in repair of the Court House in such district, or to be by him added to the moneys or fees collected by him, for the erection of a Court House or Goal in such district, so long as such fees are collected to defray the cost of such erection, and if it was imposed in the Province of Nova Scotia it shall be paid over to the County Treasurer, for County purposes, and if it was imposed in the Province of New Brunswick, it shall be paid over to the County Treasurer, for County purposes.

Certificate of expenses.

27. The amount of expenses of attending before the Justices and the compensation for trouble and loss of time therein, and the allowances to the Constables and other Peace Officers for the appre-

hension and detention of the offender, and the allowances to be paid to the prosecutor, witnesses and constables for attending at the trial or examination of the offender, shall be ascertained by and certified under the hands of such Justices, but the amount of the costs, charges and expenses attending any such prosecution, to be allowed and paid as aforesaid, shall not in any one case exceed the sum of eight dollars.

By whom such expenses shall be paid.

28, Every such order of payment to any prosecutor or other person, after the amount thereof has been certified by the proper Justices of the Peace as aforesaid, shall be forthwith made out and delivered by the said Justices or one of them, or by the Clerk of the Recorder's Court, Clerk of the County Court or Clerk of the Peace, as the case may be, unto such prosecutor or other person, upon such Clerk being paid his lawful fee for the same, and shall be made upon the officer to whom fines imposed under the authority of this Act are required to be paid over in the district, city, county or union of counties in which the offence was committed, or was supposed to have been committed, who upon sight of every such order, shall forthwith pay to the person named therein, or to any other person duly authorized to receive the same on his behalf, out of any monies received by him under this Act, the money in such order mentioned, and shall be allowed the same in his accounts of such moneys.

Con. Stat. cap. 106, repealed. Exception.

29. The Act chapter one hundred and six of the Consolidated Statutes of Canada is hereby repealed, except as to cases pending under it at the time of the coming into force of this Act, and as to all sentences pronounced and punishments awarded under it, as regards all which this Act shall be construed as a re-enactment of the said Act with the amendments hereby made and not as a new law.

Commencement of this Act.

30. This Act shall commence and take effect on the first day of January, in the year of Our Lord one thousand eight hundred and seventy.

CAP. XXXIV.

An Act respecting Juvenile Offenders within
the Province of Quebec.

[Assented to 22nd June, 1869.]

Preamble.

WHEREAS the Legislature of the Province of Quebec, during its now last Session, passed an Act making certain provisions for the establishment of Certified Reformatory Schools, and the law respecting prisons for young offenders requires to be amended so as to meet the provisions of the said Act: Therefore, Her Majesty by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Part Cap. 107, of Con. Stat. Can. repealed.

1. In so far as respects the Province of Quebec, the sections five, six, seven, eight, nine, ten, eleven and twelve, of the chapter one hundred and seven of the Consolidated Statutes of Canada, intitled: *An Act respecting Prisons for young Offenders*, are hereby repealed, except as respects person under sentence when this Act comes into force.

Offenders under 16 years may be sent to Reformatory Schools.

2. Whenever after the passing of this Act, any person apparently under the age of sixteen years

is convicted before any Court of Criminal Jurisdiction or before any Judge of the Sessions of the Peace, Recorder, District or Police Magistrate, of any offence for which he would be liable to imprisonment, he may be sentenced on such conviction, to be detained in a Certified Reformatory School for any term not less than two years, nor more than five years, or he may be sentenced to be first imprisoned in the Common Goal for a period not in any case exceeding three months, and at the expiration of his sentence to be sent to a Certified Reformatory School, and to be there detained for a period of not less than two years, and not more than five years.

Power to discharge.

3. The Lieutenant-Governor may at any time, in his discretion, order that any offender detained in such reformatory school under a summary conviction be discharged.

Removal of incorrigibles.

4. The Lieutenant-Governor may at any time, on the report of one of the Inspectors of Prisons for the Province of Quebec, order any offender undergoing sentence in any Certified Reformatory School, on a conviction for felony, to be removed as incorrigible; and in any such case the offender shall be imprisoned in the Penitentiary for the remainder of the term of his sentence.

Detention of offenders under 16 years previous to trial.

5. Any person apparently under the age of

sixteen years, arrested on a charge of having committed any offence not capital, shall not while awaiting trial for such offence, be detained in any common Goal, if there be a Certified Reformatory School within three miles of such Goal, but shall be detained in such Reformatory School while awaiting trial; and if there be more than one such School within such distance, the person so charged shall be detained in that one of them which is conducted the most nearly in accordance with the religious belief to which his parents belong, or in which he has been educated.

Punishment of persons breaking the Rules of Reformatory Schools.

6. If any Offender detained in a Certified Reformatory School, willfully neglects or willfully refuses to conform to the rules thereof, he shall, upon summary conviction before a Justice or Magistrate having jurisdiction in the place or district where the school is situate, be imprisoned with hard labor, for any term not exceeding three months; and at the expiration of the term of his imprisonment, he shall by and at the expense of the managers of the school, be brought back to the school from which he was taken, there to be detained during a period equal to so much of his period of detention as remained unexpired at the time of his being sent to the prison.

Apprehension of offenders escaping from such School.

7. If any offender sentenced to be detained in

a Certified Reformatory School, escapes therefrom he may at any time before the expiration of his period of detention, be apprehended without warrant, and if the managers of the school think fit, but not otherwise, may, (any other Act to the contrary notwithstanding) be then brought before a Justice or Magistrate having jurisdiction in the place or district where he is found, or in the place or district where the school from which he escaped is situate; and he shall thereupon be liable, on summary conviction before such a Justice or Magistrate, to be imprisoned with hard labor, for any term not exceeding three months; and at the expiration of such term he shall, by and at the expense of the managers of the school, be brought back to the school from which he escaped, there to be detained during a period equal to so much of his period of detention as remained unexpired at the time of his escaping.

Punishment of persons aiding in escape, &c.

Harbouring persons escaping.

8. Every person who commits any of the following offences, that is to say :

First—Knowingly assists, directly or indirectly, any offender detained in a Certified Reformatory School, to escape from the school ;

Second—Directly or indirectly induces such an offender to escape from the School ;

Third—Knowingly harbours, conceals or prevents from returning to the school, or assists in har-

bouring, concealing or preventing from returning to the school any offender who has escaped from a Certified Reformatory School, shall, on summary conviction before two Justices, or any Judge of the Sessions of the Peace, Recorder, Police or District Magistrate, be liable to a penalty not exceeding eighty dollars, or at the discretion of the Justices or other functionary before whom he is convicted, to be imprisoned for any term not exceeding two months, with or without hard labor.

A certain Reformatory School recognized.

9. The Reformatory School at present in use in the Province of Quebec, shall, so long as it is used for that purpose, be held to be a Certified Reformatory School for the purposes of this Act.

Act to apply only to Quebec, &c.

10. This Act shall apply only to the Province of Quebec, and any Act relating to criminal law or procedure passed during the present or the now last Session of Parliament, shall be construed subject to this Act, and so much thereof as may be inconsistent with this Act, shall have no effect as respects the Province of Quebec.

CAP. XXXV.

An Act for the more speedy trial, in certain cases, of persons charged with felonies and misdemeanors, in the Provinces of Ontario and Quebec.

[Assented to 22nd June, 1869.]

Preamble.

HER MAJESTY, by and with the advice and consent of the Senate and House of Commons, enacts as follows :

Certain offenders may, by their own consent, be tried by a Judge only.

1. Any person committed to a jail for trial on a charge of being guilty of any offence for which he may be tried at a Court of General Sessions of the Peace, may, with his own consent, of which consent an entry shall then be made of record, and subject to the provisions hereinafter made, be tried out of Sessions, and if convicted, may be sentenced by the Judge.

The provisions of this Statute apply only to the Provinces of Quebec and Ontario. It is to be regretted that a uniform system of Criminal Law applicable to the various Provinces of the whole Dominion has not as yet been introduced. The object of the Legislature in framing the Statute now under consideration was undoubtedly to do away with the hardship and cruelty of forcing persons accused of crimes, who are

unable to find bail for their appearance, to remain untried in Goal for months, in many cases thus inflicting punishment on innocent persons.

The right to a trial by jury was for many years regarded as the great bulwark of the liberty of British subjects; but now a days the confidence of the public in the perfect fairness of a jury trial is very much weakened, and in a great number of cases persons guilty of trifling offences are, by the action of Parliament, liable to be condemned on summary conviction by Justices of the Peace to fine and imprisonment.

The present Statute however effects a much greater change in the law than any of those which have preceeded it either in England or Canada. We have in this instance in the matter of Law reform gone further than the mother country; for whilst there Justices of the Petty Sessions may upon the plea of guilty being put in before them, in cases of larceny value exceeding 5s., stealing from the person, and larceny as a clerk or servant, sentence the party charged with the offence; the plea of not guilty deprives them of their summary jurisdiction and the accused must be sent before a jury; our Statute provides that in all cases triable at General Sessions of the Peace, with his own consent the person accused can be tried and sentenced by the officials authorised by this Act summarily, without the intervention or aid of a jury.

Commitment for trial.

The person charged must be fully committed for trial, even where the magistrate committing is a Judge of Sessions or District Magistrate or Sheriff. The commitment for trial is in fact a condition precedent to the summary trial under this Act.

Offences triable.

Vide ante pp. 36-51 Jurisdiction of the Quarter Sessions for offences excepted from the jurisdiction of that Court.

Consent of prisoner.

The consent must be given by the prisoner personally, and an entry thereof should be made on the record of the cause immediately upon its being given.

Duty of Sheriff having a prisoner so triable.

2. It shall be the duty of every Sheriff within twenty-four hours after any prisoner charged as aforesaid is committed to jail for trial, to notify the Judge in writing that such prisoner is so confined stating his name and the nature of the charge preferred against him, whereupon with as little delay as possible, such Judge shall cause the prisoner to be brought up before him.

Statement to be made to prisoner by Judge.

If prisoner objects—or consents.

If he pleads guilty.

3. Having obtained the depositions on which the prisoner was so committed, the Judge shall state to him,—

1. That he is charged with the offence, describing it;

2. That the prisoner has his option to be forthwith tried before such Judge without the intervention of a Jury, or to remain untried until the next sittings of such sessions or of a Court of Oyer and Terminer, or, in Quebec, of any Court having criminal jurisdiction ;

3. If the prisoner demands a trial by Jury, the Judge shall remand him to jail ; but if he consents to be tried by the Judge without a Jury, the

County Attorney or Clerk of the Peace shall draw up a Record of the proceedings as nearly as may be in one of the forms in the Schedules A and B to this Act ; if upon being arraigned upon the charge the prisoner pleads guilty, such plea shall be entered in the Record, and the Judge shall pass the sentence of the law on such prisoner, which shall have the same force and effect as if passed at any Court of General Sessions of the Peace.

If he pleads not guilty.

Trial, and conviction or discharge.

4. If the prisoner upon being so arraigned and consenting as aforesaid pleads not guilty, the Judge shall appoint an early day, or the same day, for his trial, and it shall be the duty of the County Attorney or Clerk of the Peace to subpœna the witnesses named in the depositions, or such of them, and such other witnesses as he may think requisite to prove the charge, to attend at the time appointed for such trial, and the prisoner being ready, the Judge shall proceed to try him, and if he is found guilty, sentence shall be passed as in the last preceding section mentioned, but if he is found not guilty, the Judge shall immediately discharge him from custody, so far as respects the charge in question.

It is to be remembered that all persons tried under this Act are tried for indictable offences and that consequently the provisions of 32 and 33 Vic. c. 29 s. 45 apply to them and that they are entitled after the close of the case for the

prosecution to make full answer and defence thereto by Counsel learned in the law. So far as the actual proceedings at the trial are concerned, the rules laid down for the trial of a summary prosecution under 32 and 33 Vic. c. 31. ante pp. 179-184 are applicable with the exception that the Crown has the right of reply.—32 and 33 Vic. c. 29 s. 45.

The rules applicable to trials generally will apply in the event of the prisoner declaring that he is not ready to proceed and care should be taken lest by too great haste injustice be done. A reasonable time if demanded should be granted, and if on the day fixed for the trial, the witnesses for the defence be not in attendance, on proof of diligence by the prisoner or of incapability on his part to procure their attendance the trial should be fixed for another day.

To be a Court of Record.

5. The Judge sitting on any such trial for all the purposes thereof and proceedings connected therewith or relating thereto, is hereby constituted a Court of Record, and the record in any such case shall be filed among the records of the Court of General Sessions of the Peace, as indictments are, and as part of such records.

Witnesses summoned must attend.

6. Any witness, whether on behalf of the prisoner or against him, duly summoned or subpoenaed to attend and give evidence before such Judge sitting on any such trial on the day appointed for the same shall be bound to attend, and remain in attendance throughout the whole trial, and in case he fails so to attend, he shall be held guilty of contempt of Court, and he may be proceeded against therefor accordingly.

Proceeding against witnesses failing to attend when summoned.

7. Upon proof to the satisfaction of the Judge of the service of subpœna upon any witness who fails to attend before him as required by such subpœna and such Judge being satisfied that the presence of such witness before him is indispensable to the ends of Justice, he may by his Warrant cause the said witness to be apprehended and forthwith brought before him to give evidence as required by such subpœna, and to answer for his disregard of the same, and such witness may be detained on such warrant before the said Judge or in the Common Goal with a view to secure his presence as a witness or in the discretion of the Judge, such witness may be released on recognizance with or without sureties conditioned for his appearance to give evidence as therein mentioned, and to answer for his default in not attending upon the said subpœna as for a contempt; the Judge may in a summary manner examine into and dispose of the charge of contempt against the said witness, who if found guilty thereof may be fined or imprisoned or both, such fine not to exceed one hundred dollars, and such imprisonment to be in the Common Jail, with or without hard labour, and not to exceed the term of ninety days; the said Warrant may be in the form "C," and the conviction for contempt in the Form "D," to this Act, and shall be authority to the persons and

officers therein required to act, to do as therein they are respectively directed.

By whom the powers given by this Act may be exercised,

8. All the powers and duties hereby conferred and imposed upon the Judge, shall be exercised and performed in the Province of Ontario by any County Judge, junior or Deputy Judge, authorized to act as Chairman of the General Sessions of the Peace, and in the Province of Quebec, in any District wherein there is a Judge of the Sessions, by such Judge of Sessions, and in any District wherein there is no Judge of Sessions but wherein there is a District Magistrate, by such District Magistrate, and in any District wherein there is neither a Judge of Sessions nor a District Magistrate, by the Sheriff of such District.

Extent of Act.

9. This Act shall apply only to the Provinces of Ontario and Quebec.

The proper course, it is submitted where a witness does not attend in obedience to a summons or subpoena, is for the party interested in his giving his testimony, to exhibit his information in writing to the Judge sitting at such trial on oath, detailing the facts and praying for a warrant to apprehend such witness in order to obtain his testimony and that he may be punished for his contempt. (Vide appendix form No. 3, p. 344.

APPENDIX.

SCHEDULE A.

(1) *Form of Record when the Prisoner pleads Not Guilty.*

Province of _____
County or District of _____ } Be it remembered that A. B. being
to wit: } a prisoner in the Jail of the said County
charge of having on _____ day of _____ 18 _____, feloniously
stolen, &c., (*one cow, the property of C. D., or as the case may be,*
stating briefly the offence), and being brought before me,
(*describe the Judge*) on the _____ day _____ 18 _____, and asked by
me if he consented to be tried before me without the intervention
of a Jury, consented to be so tried; and that upon the
day of _____ 18 _____, the said A. B. being again brought before
me for trial, and declaring himself ready, was arraigned upon the
said charge and pleaded not guilty; and after hearing the evidence
adduced as well in support of the said charge as for the prisoner's
defence (*or as the case may be*) I find him to be guilty of the offence
with which he is charged as aforesaid, and I accordingly sentence
him to be (*here insert such sentence as the law allows and the Judge*
thinks right,) or I find him not guilty of the offence with
which he is charged, and discharge him accordingly. Witness my
hand at _____ in the County (*or District*) of _____, this
day of _____ 18 _____.

O. K.

Signature of Judge.

SCHEDULE B.

(2) *Form of Record when the Prisoner pleads Guilty.*

Province of _____
County (*or District*) of _____ } Be it remembered that A. B. being
To wit: } a prisoner in the Jail of the said County,
the _____ day of _____ 18 _____, feloniously stolen, &c., (*one cow*
the property of, or as the case may be, stating briefly the offence) and
being brought before me (*describe the Judge*) on the _____ day
of _____ 18 _____, and asked by me if he consented to be tried

before me without the intervention of a jury, consented to be so tried: and that the said A. B. being then arraigned upon the said charge, he pleaded guilty thereof, whereupon I sentence the said A. B. to be (*here insert such sentence as the law allows and the Judge thinks right.*) Witness my hand this day of 186 .

O. K.

Signature of Judge.

(3) INFORMATION TO GROUND A WARRANT AGAINST A WITNESS NOT ATTENDING TO GIVE EVIDENCE AFTER BEING SUMMONED OR SUBPÆNAED. (Not in Act.)

Canada,
Province of
County (or District) (*as the
case may be*) of
, to wit: }

The information and complaint of C. D. of (*yeoman*)
taken the day of , in the year of our Lord
before the undersigned (*describe the Judge as the case
may be*) saith that E. F. in the said County (or District
or as the case may be) of laborer, was likely to give material
evidence on behalf of the prosecution (*or defence as the case may
be*) on the trial of a certain charge of (*larceny or as the case may be*)
against A. B. and that the said E. F. was duly subpœnaed (*or bound
under recognizances as the case may be*) to appear on the
day of 187 , in the said County (*or District or as the
case may be*) at o'clock in the noon before me,
to testify what he should know concerning the said charge
against the said A. B. and that the presence of the said E. F. before
me was and is indispensable to the ends of Justice. And that
the said E. F. was duly served with the said subpoena (*or that he
was duly bound in recognizances to appear before me as the case
may be*) as aforesaid. And hath neglected to appear at the trial
and place appointed without just excuse.

Sworn (*or affirmed*) before (me) the day and year first above
mentioned at

O. K.

Judge.

(4)

SCHEDULE C.

(L.S.) Canada, } To all or any of the Constables or
 Province of } other Peace Officers in the said
 County (or District) (as the } (County (or District) as the case may
 case may be) of } be) of
 to wit:

Whereas it having been made to appear before me that E. F., in the said County (or District) (or as the case may be,) was likely to give material evidence on behalf of the prosecution or defence (as the case may be) on the trial of a certain charge of (as larceny) (or as the case may be,) against A. B., and that the said E. F., was duly subpoenaed or bound under recognizances as the case may be) to appear on the day of , 18 , at in the said (County or District) (as the case may be,) at o'clock (forenoon or afternoon, as the case may be,) before me to testify what he should know concerning the said charge against the said E. F.

And whereas proof hath this day been made before me upon oath of such subpoena having been duly served upon the said E. F., or of the said E. F. having been duly bound in recognizances to appear before me) (as the case may be;) And whereas the said E. F., hath neglected to appear at the trial and place appointed and no just excuse has been offered for such neglect; These are therefore to command you to take the said E. F., and to bring and have him forthwith before me, to testify what he shall know concerning the said charge against the said A. B., and also to answer his contempt for such neglect.

Given under my hand this day of in the year of Our Lord 18 .

O. K.

Judge.

(5)

SCHEDULE D.

L.S. Canada, } Be it remembered that on the
 Province of } day of in the year of our Lord
 (County or District) } 18 , in the (County or District as the
 To wit: } case may be) of E. F. is convicted
 before me, for that he the said E. F. did not attend before me to give evidence on the trial of a certain charge against one A. B. of larceny, (or as the case may be) although duly subpoenaed (or bound

by recognizance) to appear and give evidence in that behalf (*as the case may be*) but made default therein, and hath not shewn before me any sufficient excuse for such default, and I adjudge the said E. F. for his said offence to be imprisoned in the Common Gaol of the (County or District) of at for the space of there to be kept at hard labor (*and in case a fine is also intended to be imposed, then proceed.*) And I also adjudge that the said E. F. do forthwith pay to and for the use of Her Majesty a fine of dollars, and in default of payment that the said fine with the costs of collection be levied by distress and sale of the goods and chattels of the said E. F. (*or in case a fine alone is imposed, the clause for imprisonment will be omitted.*)

Given under my hand at in the said (County or District) of the day and year first above mentioned.

O K

Judge

CAP. XXXVI.

An Act respecting the Criminal Law, and to repeal certain enactments therein mentioned.

[Assented to 22nd June. 1869.]

Preamble.

WHEREAS by the several Acts of the Parliament of Canada, passed in the now last Session and present Session thereof respectively, and mentioned in the Schedule A to this Act, divers Act and parts of Acts, and provisions of law, heretofore in force in the late Province of Canada and in the Provinces of Nova Scotia and New Brunswick, have been assimilated, amended and consolidated, and it is expedient to provide for the repeal thereof, and of so much of any other Acts or provisions of law as may be contrary to or superseded by the said Acts mentioned in Schedule A; Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Acts and enactments in Schedule B. repealed.

1. The Acts and parts of Acts mentioned in Schedule B hereunto annexed, are hereby repealed, as are also all other Acts and parts of Acts and provisions of law, contrary to or inconsistent with the Acts mentioned in Schedule A or any of them, subject to the following provisions:

Exception as to subjects under control of Local Legislatures.

Such repeal shall not extend to matters relating solely to subjects as to which the Provincial Legislatures have, under the British North America Act, 1867, exclusive powers of legislation, or to any enactment of any such Legislature for enforcing by fine, penalty or imprisonment any law in relation to any such subject as last aforesaid, or to any municipal By-law relating to any offence within the scope of the powers of the municipality:

Not to affect certain Acts of the Dominion, or Acts making provision on the same subject as Acts in Schedule A &c.

Such repeal shall not extend to any provision of any Act of the Parliament of Canada, creating, or providing for the punishment of any offence against such Act, or for the proceedings for enforcing such provision,—or to any other Act or enactment not mentioned as repealed in Schedule B, and not contrary to the Acts mentioned in Schedule A, or any of them, but making special provision for the punishment of any offence, or as to the proceedings for the prosecution and conviction of the offender, other than that made in the Acts in Schedule A or any of them for a like purpose:—but in any such case the offender may be indicted or otherwise proceeded against, and convicted (summarily or otherwise as the case may be,) and punished, either under any of the Acts

mentioned in Schedule A, or any other Act of the Parliament of Canada, or under any such Act or enactment as aforesaid not mentioned as repealed in Schedule B:—

As to offences committed and things done prior to such repeal.

Every offence wholly or partly committed against any Act or enactment hereby repealed, prior to such repeal, shall be dealt with, inquired of, tried, determined and punished, and every penalty in respect of any such offence shall be recovered, in the same manner as if the said Acts and enactments had not been repealed: and every act duly done, and every Warrant and other instrument duly made or granted before such repeal, shall continue and be of the same force and effect as if the said Acts and enactments had not been repealed; and every right, liability, privilege and protection in respect of any matter or thing committed or done before such repeal, shall continue and be of the same force and effect as if the said Acts and enactments had not been repealed, and every action, prosecution or other proceeding commenced before such repeal, or thereafter commenced in respect of any such matter or thing, may be prosecuted, continued and defended as if such Acts and enactments had not been repealed.

As to crime of High Treason.

2. Nothing in any of the Acts mentioned in Schedule A shall affect the crime of High Treason,

except only as respects cases punishable under the provisions of the *Act for the better security of the Crown and of the Government*, mentioned in the said Schedule.

Special provision as to peremptory challenges and warrants in New Brunswick.

3. The provisions in the Act respecting procedure in criminal cases and other matters relating to criminal law, as to the number of peremptory challenges allowed to prisoners in criminal cases, shall not apply to any trial to be had in the Province of New Brunswick, before the first day of January, in the year of Our Lord one thousand eight hundred and seventy-one; and until after the said day, a warrant issued by a Justice of the Peace in the said Province, may as heretofore be executed in any part thereof, without being backed.

And as to seals to warrants, there and in other parts of Canada.

4. No provision in any of the Acts mentioned in the said Schedule A requiring any warrant or document issued or granted by any Justice of the Peace, to be under seal, shall apply to any such instrument or document issued or granted in the Province of New Brunswick before the day last aforesaid; and if in any such instrument or document issued in any Province in Canada at any time, it is stated, that the same is given under the hand and seal of any Justice, signing it, such seal

shall be presumed to have been affixed by him, and its absence shall not invalidate the instrument, or such Justice may at any time thereafter affix such seal with the same effect as if it had been affixed when such instrument was signed.

Special provision as to imprisonment in New Brunswick or Nova Scotia.

5. Notwithstanding any provision in any of the Acts mentioned in Schedule A, that any term of imprisonment less than two years shall be in some gaol or place of confinement other than the Penitentiary, any offender sentenced under any such act before the day last aforesaid in New Brunswick or Nova Scotia, to imprisonment for a term less than two years, may in the discretion of the Court passing such sentence be sentenced to undergo such imprisonment in the Penitentiary of the Province where the sentence is passed, instead of being sentenced to undergo the same in any other gaol or place of confinement, and any such provision as first aforesaid, shall be construed subject to this section.

As to the officers to whom recognizances are to be transmitted in Ontario and elsewhere.

6. In all cases when a party who has entered into a recognizance under the Act respecting the duties of Justices of the Peace out of Sessions, in relation to summary convictions and orders, has failed to appear according to the condition of such recognizance, and his default has been certified by the

Justice or Justices as therein provided, the proper Officer to whom the recognizance and certificate of default are to be transmitted in the Province of Ontario, shall be the Clerk of the Peace of the County for which such Justice or Justices are appointed or are acting, and the Court of General Sessions of the Peace for such County shall, at its then next Sitting, order all such recognizances to be forfeited and estreated, and the same shall be enforced and collected in the same manner and subject to the same conditions as any fines, forfeitures or amercements imposed by or forfeited before such Court; and in the other Provinces of Canada, the "proper Officer" to whom any such recognizance and certificate shall be transmitted, shall be the Officer to whom like recognizances have been heretofore accustomed to be transmitted under the law in force before the coming into force of the said Act, and such recognizances shall be enforced and collected in the same manner as like recognizances have heretofore been.

As to returns by the Justices of the Peace.

7. No return purporting to be made by any Justice of the Peace under the Act last above cited, shall be vitiated by the fact of its including, by mistake, any convictions or orders had or made before him in any matter over which any Provincial Legislature has exclusive jurisdiction, or with respect to which he may have acted under the authority of any Provincial law.

Certain Magistrates to have the power of two Justices.

8. Any Judge of the Sessions of the Peace or any District Magistrate, in the Province of Quebec, shall in all cases have all the powers vested in two Justices of the Peace by any Act mentioned in Schedule A, or any other Act relating to Criminal law, in force in that Province.

When the repeal shall take effect.

9. The foregoing provisions of this Act, and the repeal of the Acts and enactments therein referred to, shall take effect on and after the first day of January, in the year of our Lord, one thousand eight hundred and seventy, and not before, except as to such of the said Acts and enactments as are contrary to or inconsistent with the Acts mentioned in Schedule A, as being passed in the now last Session of the Parliament of Canada, which shall be held to have been repealed from the time when the Act or Acts to or with which they are contrary or inconsistent, came into force.

How this Act shall be construed.

10. This Act shall be construed as having been passed after the Acts of the present Session mentioned in Schedule A, and as amending and explaining them.

SCHEDULE A.

ACTS OF THE PARLIAMENT OF CANADA.

Acts passed in the Session of 1867-8, 31st Victoria.

CHAPTER.	TITLE.
14	An Act to protect the inhabitants of Canada against lawless aggressions from subjects of foreign countries at peace with Her Majesty.
15	An Act to prevent the unlawful training of persons to the use of arms, and the practice of military evolutions; and to authorize Justices of the Peace to seize and detain arms collected or kept for purposes dangerous to the public peace.
47	An Act respecting the manufacture or importation of copper coins or tokens.
62	An Act respecting Harbor Police.
69	An Act for the better security of the Crown and of the Government.
70	An Act respecting Riots and Riotous Assemblies.
71	An Act respecting forgery, perjury and intimidation in connection with the Provincial Legislatures and their Acts.
72	An Act respecting accessories to, and abettors of indictable offences.
73	An Act respecting Police of Canada.
74	An Act respecting persons in custody charged with high treason or felony.
75	An Act respecting penitentiaries and the Directors thereof and for other purposes.

*Acts passed in the present Session of the Parliament of
Canada.*

An Act to remove doubts as to Legislation in Canada,
regarding offences not wholly committed within its limits

An Act respecting offences relating to the Coin.

An Act respecting Forgery.

An Act respecting offences against the Person.

An Act respecting Larceny and other similar offences.

An Act respecting malicious injuries to Property.

An Act respecting Perjury.

An Act for the better preservation of peace in the vic-
inity of Public Works.

An Act respecting certain offences relative to Her Majes-
ty's Army and Navy.

An Act for the better protection of Her Majesty's Mili-
tary and Naval Stores.

An Act respecting Cruelty to Animals.

An Act respecting Vagrants.

An Act respecting Procedure in Criminal Cases and
other matters relating to Criminal Law.

An Act respecting the duties of Justices of the Peace,
out of sessions, in relation to persons charged with Indictable
Offences.

An Act respecting the duties of Justices of the Peace,
out of sessions, in relation to Summary Convictions and
Orders.

An Act respecting the prompt and summary administra-
tion of criminal justice in certain cases.

An Act respecting the trial and punishment of Juvenile
Offenders.

An Act respecting Juvenile Offenders within the Pro-
vince of Quebec.

An Act for the more speedy trial in certain cases of per-
sons charged with felonies and misdemeanors, in the Pro-
vinces of Ontario and Quebec.

SCHEDULE B.

ACTS OF THE LEGISLATURE OF THE LATE PROVINCE OF CANADA.

Consolidated Statutes of Canada.

Reference to Act.	TITLE OF ACT.	Extent of Repeal.
Chapter 30	An Act respecting the sale of Intoxicating Liquors near Public Works.	The whole.
Chapter 90	An Act respecting Offences against the State.	The whole.
Chapter 91	An Act respecting Offences against the Person.	The whole.
Chapter 92	An Act respecting Offences against Person and Property.	The whole.
Chapter 93	An Act respecting Arson and other Malicious Injuries to Property.	The whole.
Chapter 94	An Act respecting Forgery.	The whole.
Chapter 96	An Act respecting Cruelty to Animals.	The whole.
Chapter 99	An Act respecting the Procedure in Criminal Cases.	The whole, except sections eighty-seven, ninety-seven, one hundred and twenty, and one hundred and twenty-one.

Reference to Act.	TITLE OF ACT.	Extent of Repeal.
Chapter 102	An Act respecting the Duties of Justices of the Peace, out of Sessions, in relation to persons charged with Indictable Offences.	The whole, except section fifty-nine.
Chapter 103	An Act respecting the Duties of Justices of the Peace, out of Sessions, in relation to Summary Convictions and Orders.	The whole, except sections seventy-four, seventy-five, seventy-six, seventy-seven, seventy-eight, seventy-nine, eighty, eighty-one, and eighty-five.
Chapter 105	An Act respecting the prompt and summary administration of Criminal Justice in certain cases.	The whole, except sections thirty-one, thirty-two, and thirty-three.
Chapter 106	An Act respecting the trial and punishment of Juvenile Offenders.	The whole, except sections six, seven, and eight.

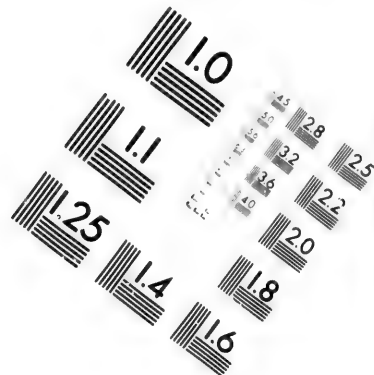
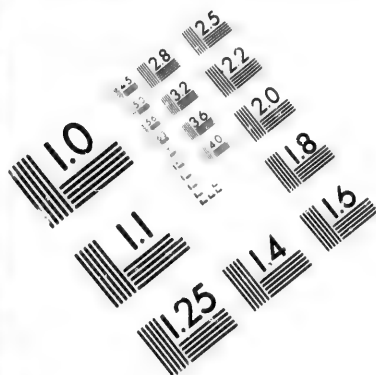
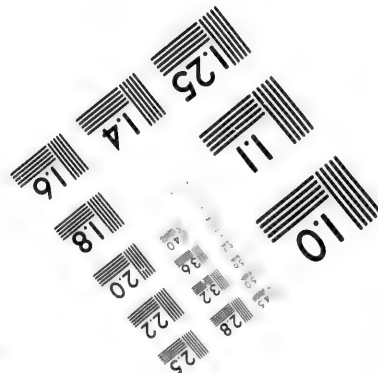
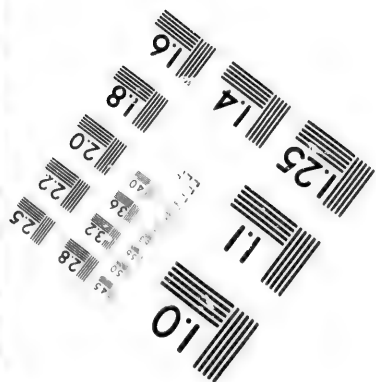
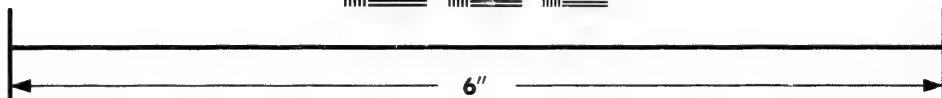
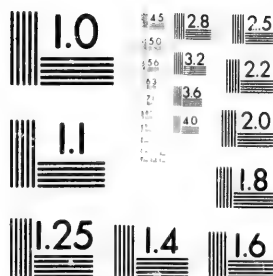


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Acts passed since the Consolidation of the Statutes.

Reference to Act.	TITLE OF ACT.	Extent of Repeal.
23 V., c. 37	An Act for the further protection of Growing Timber.	The whole.
24 V., c. 7	An Act to amend the Law relating to the unlawful Administering of Poison.	The whole.
24 V., c. 10	An Act to prevent vexatious Indictments for certain Misdemeanors.	The whole.
24 V., c. 11	An Act to amend <i>the Prison and Asylum Inspection Act</i> .	The whole.
24 V., c. 12	An Act to amend the one hundred and eleventh chapter of the Consolidated Statutes of Canada, intituled: "An Act respecting the Provincial Penitentiary of Canada."	The whole.
24 V., c. 14	An Act to abolish the right of Courts of Quarter Sessions and Recorders' Courts to try Treasons and Capital Felonies	The whole.
24 V., c. 15	An Act to amend the one hundred and second chapter of the Consolidated Statutes of Canada, intituled: "An Act respecting the duties of Justices of the Peace, out of Sessions in relation to persons charged with Indictable Offences."	The whole.

Reference to Act.	TITLE OF ACT.	Extent of Repeal.
24 V., c. 26	An Act to amend and consolidate the Laws respecting the Recorders' Court of the City of Quebec.	Section thirty-six.
27, 28 V., c. 19.	An Act to amend and consolidate the Law respecting Accessories to and Abettors of Indictable Offences, and for other purposes relative to the Criminal Law,	The whole.
29 V., c. 13	An Act for abolishing the Punishment of Death in certain cases.	The whole.
29 V., c. 14	An Act to provide more fully for the punishment of Offences against the Person, in respect to the crime of Kidnaping.	The whole.
29, 30 V., c. 5	An Act to prevent the unlawful training of persons to the use of arms, and to practice military evolutions or exercises; and to authorize Justices of the Peace to seize and detain arms collected or kept for purposes dangerous to the public peace.	The whole.
29, 30 V., c. 121	An Act to incorporate the Canada Vine Growers' Association.	Section sixteen.

Consolidated Statutes for Upper Canada.

Reference to Act.	TITLE OF ACT.	Extent of Repeal.
Chapter 13	An Act respecting the Court of Error and Appeal.	So much as is repealed by or inconsistent with the Act of this Session, respecting Procedure in Criminal cases, and other matters relating to Criminal Law.
Chapter 31	An Act respecting Jurors and Juries.	Sections ninety-nine and one hundred.
Chapter 32	An Act respecting Witnesses and Evidence.	Sections three and four, as to Criminal cases only.
Chapter 97	An Act relating to High Treason, to Tumults and Riotous Assemblies and to other offences.	The whole.
Chapter 99	An Act to prevent the unlawful training of persons in military evolutions and the use of fire arms; and to authorize the seizure of fire-arms collected for purposes dangerous to the public peace.	The whole except section three.

Reference to Act.	TITLE OF ACT.	Extent of Repeal.
Chapter 100	An Act for the punishment of any persons who seduce soldiers or sailors to desert from Her Majesty's service.	The whole.
Chapter 101	An Act respecting Forgery and Perjury in certain cases.	The whole, except section two.
Chapter 108	An Act respecting prosecutions in cases of Misdemeanor.	Section three.
Chapter 110	An Act to allow to any person indicted a copy of the indictment.	The whole.
Chapter 111	An Act respecting amendments at trial.	The whole.
Chapter 113	An Act respecting new trials and appeals, and Writs of Error in Criminal cases in U. Canada.	The whole, except sections five, sixteen and sev'teen.
Chapter 115	An Act respecting the punishment of certain offences, and the commuting of sentence of death in certain cases.	The whole.
Chapter 116	An Act respecting corruption of blood.	The whole.
Chapter 124	An Act respecting the Return of Convictions and Fines by Justices of the Peace and of Fines levied by Sheriffs.	The whole, except section seven.

Acts passed since the Consolidation of the said Statutes.

29, 30 V., c. 41	An Act to amend the Law of Crown and Criminal Procedure and Evidence at Trial in Upper Canada.	The whole, so far as regards criminal procedure only.
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Reference to Act.	TITLE OF ACT.	Extent of Repeal.
29, 30 V., c. 44	An Act respecting Persons in custody charged with High Treason or Felony.	The whole.
29, 30 V., c. 50	An Act to amend the Law respecting Appeals in cases of Summary Convictions, and Returns thereof by Justices of the Peace in Upper Canada.	The whole.

Consolidated Statutes for Lower Canada.

Chapter 12	An Act respecting the Desertion of Soldiers.	The whole.
Chapter 13	An Act respecting Arms and Munitions of War.	The whole.
Chapter 77	An Act respecting the Court of Queen's Bench.	Section sixty-three.
Chapter 84	An Act respecting the selecting and summoning of Jurors.	Section thirty-three.
Chapter 98	An Act respecting Appeals from the decisions of Justices of the Peace in Summary Convictions.	Sections one and two.
Chapter 105	An Act respecting certain matters connected with the Administration of Justice in Criminal Matters.	Sections one, three, four and five.

Revised Statutes.—Part IV.

Reference to Act.	TITLE OF ACT.	Extent of Repeal.
Chapter 138	Of Summary Convictions before Justices.	The whole except section twenty-two, which shall apply to the new Summary Convictions Act.
Chapter 147	Of Offences against the Public Peace.	Sections one, two, three, four and five.
Chapter 148	Of Offences against the Administration of Justice.	The whole.
Chapter 149	Of Homicide and other Offences against the Person.	The whole.
Chapter 150	Of Offences against the Habitation.	The whole.
Chapter 151	Of Fraudulent Appropriations.	The whole.
Chapter 152	Of Forgery and Offences relating to the Coin.	The whole.
Chapter 153	Of Malicious Injuries to Property.	The whole, except section sixteen.
Chapter 154	Of other Felonies.	The whole.
Chapter 155	Of the Definition of Terms and Explanations.	The whole.
Chapter 156	Of Proceedings before Indictment.	The whole, except sections seventeen, eighteen, twenty, and twenty-two.

Reference to Act	TITLE OF ACT.	Extent of Repeal.
Chapter 158	Of Proceedings on Indictment.	The whole, except sections three and twenty-three.
Chapter 159	Of Trial.	The whole, except sections ten, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, and so much of section twenty-seven as respects the appropriation of the fine in cases of common assault.
Chapter 160	Of Error, Punishment and Expenses.	Sections two, three, four, five, six, seven, and thirteen.
The Schedules to Part IV.	The whole, except Schedule U.

Acts passed since the Revision of the Statutes.

21 V., (1858) c. 22	An Act in amendment of the Criminal Law.	The whole, except sections three and five
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Reference to Act.	TITLE OF ACT.	Extent of Repeal.
23 V.,(1860) c. 32	An Act relating to Procedure in Criminal Cases.	Sections three and five.
23 V.,(1860) c. 33	An Act in amendment of the Law relating to Summary Convictions.	The whole.
23 V.,(1860) c. 34	An Act to amend the Law relating to False pretences.	The whole.
24 V.,(1861) c. 10	An Act to prevent the carrying of Deadly Weapons about the Person.	The whole.
25 V.,(1862) c. 10	An Act to amend the Law relating to Offences against the Person.	The whole.
25 V.,(1862) c. 21	An Act for taking away the Punishment of Death in certain cases, and substituting other Punishments in lieu thereof.	The whole.
27 V.,(1864) c. 4	An Act further to amend the Law relating to Offences against the Person.	The whole.
27 V.,(1864) c. 6	An Act relating to Larceny and other similar Offences.	The whole.
27 V.,(1864) c. 8	An Act relating to the issuing of Warrants by Justices of the Peace, and in aid of Police Officers and Constables in the execution of of their duties.	Section one.
30 V.,(1866) c. 9	An Act respecting Offences relating to the Army and Navy.	The whole.

Revised Statutes—Third Series—Parts III and IV.

Reference to Act.	TITLE OF ACT.	Extent of Repeal.
Chapter 136	Of Juries.	Section fifty-one, and section fifty-seven so far as regards criminal cases.
Chapter 156	Of Treason.	The whole.
Chapter 157	Of Offences relating to the Army and Navy.	The whole.
Chapter 159	Of Offences against Religion.	Sections one and three.
Chapter 161	Of Offences against the Law of Marriage.	Sections one and two.
Chapter 162	Of Offences against the Public Peace.	Sections one, two, three and four.
Chapter 163	Of Offences against the Administration of Justice.	The whole.
Chapter 164	Of Offences against the Person.	The whole.
Chapter 166	Of Offences against the Habitation.	The whole.
Chapter 167	Of Fraudulent Appropriations.	The whole.
Chapter 168	Of Forgery and Offences relating to the Coin.	The whole.
Chapter 169	Of Malicious Injuries to Property.	The whole.
Chapter 170	Of the Definition of Terms in this Title.	The whole.

Reference to Act.	TITLE OF ACT;	Extent of Repeal.
Chapter 171	Of the Administration of Criminal Justice in the Superior Court.	The whole, except sections fifty-nine, sixty, sixty-one, sixty-two, sixty-three, sixty-four, sixty-five, sixty-six, sixty-seven, seventy-five, eighty-six, eighty-seven, eighty-eight, eighty-nine, ninety, ninety-one, ninety-four, ninety-five, ninety-six, ninety-seven, ninety-eight, ninety-nine, one hundred, one hundred and one, one hundred and two, one hundred and three, and the schedule to the said chapter..

Reference to Act.	TITLE OF ACT.	Extent of Repeal.
Chapter 172	Of the Duties of Justices of the Peace in Criminal Matters.	The whole.

Acts passed since the Revision of the Statutes.

27 V.,(1864) c. 9	An Act in addition to Chapter 167 of the Bill for Revising and Consolidating the General Statutes of Nova Scotia, "Of Offences against the Person."	The whole.
29 V.,(1866) c. 19	An Act in addition to, and to amend Chapter 169 of the Revised Statutes, "Of Malicious Injuries to Property."	The whole.
29 V.,(1866) c. 37	An Act to provide for the seizure of Arms and Munitions of War.	The whole.
29 V.,(1866) c. 38	An Act for the better security of the Crown and the Government of Nova Scotia against Treasonable and Seditious Practices and Attempts.	The whole.
30 V.,(1867) c. 13	An Act to amend Chapter 157 of the Revised Statutes of Nova Scotia (third series) "Of Offences relating to the Army and Navy."	The whole.

ADDENDA.

THE FOLLOWING SECTIONS OF THE STATUTES OF THE OLD PROVINCES ARE PRESERVED FROM REPEAL BY SCHEDULE B OF 32 & 33 VIC. CAP. 36.

CONSOLIDATED STATUTES OF CANADA, CHAPTER 102.

An Act respecting the duties of Justices of the Peace out of Sessions in relation to persons charged with Indictable Offences.

59. In all cases in Lower Canada where such Constable or other person is entitled to his costs or expenses for conveying such person to prison as aforesaid, the justice or justices who commit the accused party, or any Justice of the Peace in and for the Territorial Division wherein the offence is alledged in the said warrant to have been committed, may ascertain the sum which ought to be paid to such constable or other person for arresting and conveying such prisoner to such gaol or prison, and also the sum which should reasonably be allowed him for his expenses in returning and thereupon such justice shall make an order (T. 2) upon the Sheriff for the Territorial Division within which the offence is alledged to have been committed, for payment to such Constable or other person of the sums so ascertained to be payable to him in that behalf and the said Sheriff upon such order being produced to him shall pay the amount thereof to such Constable or other person producing the same, or to any person who produces the same to him for payment. 14, 15 V. c. 96, s. 18. Latter part.

CONSOLIDATED STATUTES OF CANADA, CHAPTER 103.

An Act respecting the duties of Justices of the Peace out of Sessions, in relation to summary convictions and orders.

Regulation as to the payment of Clerk's fees.

74. In Lower Canada the Fees to which any Clerk of the Special Sessions, or Clerk of the weekly Sessions or Clerk to any Justice or Justices out of Sessions, is entitled, shall be ascertained, appointed and regulated in manner following, that is to say: the Justices of the Peace, at their General or Quarter Sessions for the several Districts, shall, from time to time, as they see fit, make Tables of the Fees which in their opinion should be paid to the Clerks of the special and weekly sessions, and to the clerks of the Justices of the Peace within their several jurisdictions, and which said Tables, being signed by the Chairman of every such Court of General or Quarter Sessions, shall be laid before the Secretary of this Province, and such Secretary, if he sees fit, may alter such Table or Tables of Fees, and subscribe a certificate or declaration that the Fees specified in such Table or Tables, as made by such justices, or as altered by such Secretary, are proper to be demanded and received by the Clerks of the Special Sessions and Weekly Sessions and the Clerks of the several Justices of the Peace respectively throughout Lower Canada; and such Secretary shall cause copies of such Tables or set of Tables of Fees to be transmitted to the several Clerks of the Peace throughout Lower Canada, to be by them distributed to the Justices within their several Districts respectively, and to be by the said Justices placed in the hands of their Clerks respectively. (14, 15 V. c. 95, ss. 26, 18.)

Penalty for Clerks receiving greater fees than entitled to.

75. If after such copy has been received by any such

clerk, he demands or receives any other or greater fee or gratuity for any business or act transacted or done by him as such clerk than such as is set down in such Table or Set of Tables, he shall forfeit for every such demand or receipt the sum of eighty dollars, to be recovered by action of debt in any court having jurisdiction for that amount by any person who will sue for the same. 14, 15 Vic. c. 95, s. 26.

What Fees Clerks may demand.

76. Until such Tables or Set of Tables are framed and confirmed, and distributed as aforesaid, such Clerk or Clerks may demand and receive such fees as they are now by rule or regulation of a Court of General or Quarter Sessions, or otherwise authorized to demand and receive. 14, 15 Vic. c. 95, s. 21.

Regulations as to whom Penalties, &c., are to be paid.

77. In every Warrant of Distress to be issued as aforesaid in Lower Canada, the constable or other person to whom the same is directed, shall be thereby ordered to pay the amount of the sum to be levied thereunder unto the Clerk of the Peace, Clerk of the Special Sessions, Clerk of the Weekly Sessions or Clerk of the Justices of the Peace (as the case may be) for the place wherein the Justice or Justices issued such warrant, and if a person convicted of any penalty, or ordered by a Justice or Justices of the Peace to pay any sum of money, pays the same to any constable or other person, such constable or other person shall forthwith pay the same to such Clerk of the Peace, Clerk of the Special Sessions, Clerk of the Weekly Sessions, or Clerk of the Justice of the Peace (as the case may be.) 14, 15 Vic. c. 95, s. 27.

May pay penalty to Gaoler. Gaoler to pay the same to Clerk.

78. If any person committed to prison in Lower Canada

upon any conviction or order as aforesaid for non-payment of any penalty or of any sum thereby ordered to be paid, desires to pay the same and costs before the expiration of the time for which he has been so ordered to be imprisoned by the warrant for his commitment, he shall pay the same to the gaoler or keeper of the prison in which he is so imprisoned, and such gaoler or keeper shall forthwith pay the same to the said Clerk of the Peace, Clerk of the Special Sessions, Clerk of the Weekly Sessions, or Clerk of the Justice of the Peace (as the case may be.) 14, 15 V. c. 95, s. 27.

As to whom Clerk is to pay the same.

79. All sums so received by the said Clerk shall forthwith be paid by him to the party or parties to whom the same respectively are to be paid according to the directions of the Statute, on which the information or complaint in that behalf has been framed. 14, 15 V. c. 95, s. 27.

In certain cases Clerk to pay the same to Treasurer, &c.

80. If such Statute contains no such directions for the payment thereof to any person or persons, then such clerk shall pay the same to the Treasurer of the District, Municipality, City, Town or Borough in which such person has been so condemned to pay the said sum, and for which such Treasurer shall give him a receipt. 14, 15 V. c. 95, s. 27.

Said Clerks and Gaolers to keep an exact account of all such moneys received by them, &c.

81. Every such Clerk of the Special Sessions, Clerk of the Weekly Sessions, or Clerk of the Justice of the Peace, and every such Gaoler or Keeper of a prison, shall keep a true and exact account of all such moneys by him received, of whom and when received and to whom and when paid and shall once in every three months, render a fair copy of every such account to the Clerk of the Peace for the District in which

such payment has been made, who shall likewise, every three months, render a similar account to the Justices assembled at the Quarterly Sessions of the Peace for the said District, as also, once every month to the Justices assembled at the Weekly Sessions of the Peace. 14, 15 V. c. 95, s. 27.

Clerks of the Peace in L. C. t Act as Clerks of Justices.

85. In all the Cities, Towns, and other places in Lower Canada where General or Quarter Sessions of the Peace are held, the Clerk or Clerks of the Peace shall act as Clerk or Clerks of the Justices of the Peace and of the Inspectors or Superintendents of Police in such Cities, Towns and other places, as well at all Special as at all Weekly Sessions of the Peace held therein. (14, 15 V. c. 95, s. 32.)

CONSOLIDATED STATUTES OF CANADA, CHAPTER 105.

An Act respecting the prompt and Summary Administration of Criminal Justice in certain cases.

Jurisdiction of Recorders extended to Inspectors of Police and Police Magistrates.

30. The Inspector and Superintendent of Police for the City of Quebec, the Inspector and Superintendent of Police for the City of Montreal, and the Police Magistrate for any City in Upper Canada, sitting in open Court, may respectively in the case of persons charged before them, do all acts by this act authorized to be done by Recorders, and all the provisions of this act referring to Recorders and Recorders Courts, and the Clerks of the Recorders' Courts, shall be read and construed also as referring to such Inspectors and Superintendents of the Police and Police Magistrates and the Courts and the Clerks of the Courts held by them respectively, and as giving them full power to do all acts authorized to be done by Recorders in the case of persons charged before them respectively. 20 V. c. 27, s. 14.

Powers of Recorders vested in two J. Ps. or in Sheriffs, &c., in L. C.

31. All the jurisdiction and powers vested in the Recorder of any City are hereby conferred upon and vested in any two or more Justices of the Peace for any District in Lower Canada when present at a chef-lieu thereof, and there sitting in open Court, and upon and in the Sheriff of any District in Lower Canada, (other than the Districts of Quebec and Montreal,) and upon and in any Deputy-Sheriff in the District of Gaspé, sitting in open Court; but the jurisdiction and powers aforesaid shall not be exercised by any two or more Justices of the Peace or Sheriff in any new District until such District has been established as such for all purposes of the administration of Justice in Criminal as well as civil matters, under a proclamation of the Governor to that effect. 22 V. c. 27, ss. 6, 10.

Sheriff exercising jurisdiction as aforesaid to be attended by certain officers.

32. The Sheriff of such districts as aforesaid in Lower Canada, or any Deputy Sheriff in the District of Gaspé, when sitting or acting under the provisions of this Act, shall be assisted, attended and obeyed by the Clerk of the Peace, Bailiffs, Constables and other Officers of such districts respectively, in the same manner as justices of the Peace in and for the said districts respectively, would be attended, assisted and obeyed by them respectively, under the same or similar circumstances; and the Clerk of the Peace for each such district shall be and act as the Clerk of the Court of the Sheriff of such district under the provisions of this act and of the act hereby amended. (22 V. c. 27, s. 7.)

Recorders of Quebec and Montreal declared to be J. Ps.

33. The Recorders of the Cities of Quebec and Montreal

respectively, have been and are, by virtue of their offices, Justices of the Peace for the judicial Districts in which the said Cities are respectively situate, and vested with all the powers and authorities, within the limits of their respective jurisdictions, of any one or two Justices of the Peace, as the case may require. (22 V. c. 27, s. 9.)

REMARKS.

The offices of Inspector and Superintendent of Police at Quebec and Montreal have been abolished. The Judge of Sessions in those Cities now exercising the duties of such Inspector and Superintendent.

For the jurisdiction reserved by the non repeal of the foregoing sections vide section 1 of this Act.

CONSOLIDATED STATUTES OF CANADA, CHAPTER 106.

An Act respecting the trial and punishment of Juvenile Offenders.

Power to J. Ps. to hear and determine.

6. Any two or more Justices of the Peace, for any District in Lower Canada, or for any City, County or Union of Counties in Upper Canada, sitting in open Court, before whom any such person, as aforesaid, charged with any offence made punishable under this Act, is brought or appears, may hear and determine the case under the provisions of this Act. 20 V., c. 29, s. 3.

Same power to Recorder. &c., and certain other Functionaries.

7. The Recorder, Inspector and Superintendent of Police, of either of the Cities of Quebec or Montreal, the Sheriff of any District in Lower Canada, other than the Districts of Quebec and Montreal, any Deputy Sheriff in the District

of Gaspé, any Judge of a County Court in Upper Canada being a Justice of the Peace, any Recorder of a City in Upper Canada, being a Justice of the Peace, any Police Magistrate in Upper Canada, and any Stipendiary Magistrate in Upper Canada, sitting in open Court, and having by law the power to do acts usually required to be done by two or more Justices of the Peace, may and shall, within their respective jurisdictions, hear and determine every charge under this Act, and exercise all the powers herein contained, in like manner and as fully and effectually as two or more Justices of the Peace can or may do by virtue of this Act. 20 V., c. 29, s. 3.

Sheriffs when sitting under this Act to be attended by Clerks of the Peace.

8. The Sheriffs of such Districts as aforesaid respectively, and any Deputy Sheriff in the District of Gaspé, when sitting or acting under the provisions of this Act, shall be assisted, attended and obeyed by the Clerks of the Peace, Bailiffs, Constables, and other Officers of such Districts respectively, in the same manner as Justices of the Peace in and for the said Districts respectively would be assisted, attended and obeyed by them respectively, under the same or similar circumstances; and the Clerk of the Peace of each such District, shall be, and act as the Clerk of the Court of the Sheriff of such District, under the provisions of this Act. 20 V., c. 29, s. 4.

REMARKS.

There was no necessity for excepting the foregoing 6 & 7 sections from the repeal of the whole Act, as their provisions are reproduced in 32 & 33 Vic., c. 35.

REVISED STATUTES OF NOVA SCOTIA, CHAPTER 171,
*Of the Administration of Criminal Justice in the Supreme
Court.*

Charges of conveying prisoners to Jail to be defrayed by themselves when of ability ; proceedings to recover the same.

59. Any person that shall hereafter be committed to Jail for any offence or misdemeanor, having means or ability thereunto, shall bear his own reasonable charges for conveying or sending him to Jail, and the charges also of such as shall be appointed to guard him and shall so guard him thither ; and if any person shall refuse to defray such charges, then a Justice of the Peace, by writing under his hand and seal, shall give warrant to any constable to sell so much of the goods and chattels of the said person so to be committed as by the discretion of the said Justice, shall satisfy and pay the charge of his conveying and sending to the Jail, the appraisement to be made by two inhabitants of the town or place where such goods or chattels shall be, and the overplus of the money which shall be made thereof to be delivered to the party to whom such goods shall belong.

Constables, expenses how allowed and paid.

60. If the person so to be committed shall not have or be known to have any goods or chattels which may be sold for such purpose, then the said Justice, on application by any Constable or other Officer who so conveyed such person to jail, shall upon oath examine into and ascertain the reasonable expenses to be allowed such Constable or other Officer, and shall forthwith, without fee, by warrant under his hand and seal, order the Treasurer of the County to pay the same, which the Treasurer is hereby required to do as soon as he receives such warrant, and any sum so paid shall be allowed in his accounts.

REVISED STATUTES OF NEW BRUNSWICK, CHAPTER 138.

Of summary convictions before Justices.

22. All sums received by any officer under any of the foregoing proceedings shall be paid by him to the County Treasurer for County contingencies, except such part thereof as any person may be legally entitled to.

REVISED STATUTES OF NEW BRUNSWICK, CHAPTER 156.

Of proceedings before Indictment.

17. The Clerk of the Peace in every County shall advise and assist any Justice of the County when required by him, in any proceeding had before him in regard to any person charged with or suspected of felony or misdemeanor, and shall attend any examination before such Justice, if the same take place within forty five miles from the Court House of the County, for which he shall be paid a reasonable compensation out of the funds of the County, by order of the Justices in Sessions.

REVISED STATUTES OF NEW BRUNSWICK, CHAPTER 159.

Of Trial.

27. All cases of common assault and battery may be dealt with by any two Justices of the County wherein the offence may have been committed, and on conviction (v), the offender shall be fined in a sum not exceeding, with costs, five pounds; but this shall not prevent any inhabitant of such County from being a competent witness to prove the offence; If the fine and costs be not paid, the Justice shall commit the offender to gaol for any term not exceeding one month, unless the same be sooner paid. If the Justice deem the offence not proved, or the assault and battery justified, or so trifling as not to require punishment, and so dismiss the case, they shall give the Defendant a certificate thereof.

REVISED STATUTES OF NEW BRUNSWICK, CHAPTER 160.

Of Error, Punishment, and Expenses.

8. The Justices in Sessions, or at any Special Sessions when called for the purpose, shall make general regulations for carrying out any sentence to hard labor, and for properly securing and governing the offenders while at work, which labor may be performed at any place within the County. The Justices shall appoint overseers to superintend the offenders; and when the labor is to be performed in the gaol, the concurrence of the Sheriff shall be had to such regulations.

9. The proceeds of the works shall be applied by the Sessions to the support and clothing of the offenders, any overplus to be paid to the County Treasurer.

10. The Justices in Sessions, or at any Special Sessions called for that purpose, may sentence to solitary confinement any person refusing to work, or guilty of misbehavior or disorderly conduct, for a term not exceeding such offender's sentence.

11. When it becomes necessary to convey any person arrested under a criminal charge to or from the gaol of the County where he was arrested, to the gaol of the County where the offence was committed, any two Justices of the last mentioned County may order a reasonable sum for the expense of such conveyance to be paid by the Treasurer of that County out of any County moneys in his hands.

STATUTES OF NEW BRUNSWICK.

21 Vic. c. 22.

An Act in Amendment of the Criminal Law.

5. Any person charged with larceny, or of receiving stolen goods knowing them to be stolen, may, when the value

of the property so taken or received shall not exceed five pounds, be admitted to bail by any Justice before whom the charge may be made; but should such person be committed to Gaol for want of bail, and there remain for forty-eight hours, he may be tried before three Justices of the County where the offence was committed, and if convicted, may be imprisoned in the Common Gaol, or Provincial Penitentiary for a term not exceeding nine months.

REMARKS.

The foregoing clauses of Statutes having reference to Justices of the Peace, Recorders, &c., in force in the Provinces at the time of the passing of the 32 and 33 Vic. c. 36, were saved from repeal by Schedule B. to that Statute. Very grave doubts may be entertained as to the wisdom of the plan followed. It would have been far better had each Statute of the Dominion been complete in itself, not needing reference to Statutes of the different Provinces to fill up voids. Uniformity on all points would also have been secured, instead of the present mongrel system.

CAP. XXVII.

An Act to amend the Act respecting the Duties of Justices of the Peace out of Sessions in relation to Summary Convictions and Orders.

[Assented to 12th May, 1870.]

Preamble, 32-33 V. c. 31.

WHEREAS, it is expedient to amend Sections sixty-five and seventy-one of the Act respecting the duties of Justices of the Peace out of Sessions in relation to summary convictions and orders; Therefore, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

New Section in place of Section 65.

1. Section sixty-five of the said Act is hereby repealed, and the following section substituted:

Appeal given from any conviction or order of a Justice or Justices of the Peace.

“ 65. Unless it be otherwise provided in any special Act
“ under which a conviction takes place or an order is made
“ by a Justice or Justices of the Peace any person who
“ thinks himself aggrieved by any such conviction or order,
“ may appeal in the Province of Quebec or Ontario, to the
“ next Court of General or Quarter Sessions of the Peace;
“ or in the Province of Quebec, to any other Court for the

“ time being discharging the functions of such Court of
“ General or Quarter Sessions of the Peace in and for any
“ district therein ; in the Province of Nova Scotia, to the
“ Supreme Court in the County where the cause of the
“ information or complaint has arisen ; and in the Province
“ of New Brunswick, to the County Court of the County
“ where the cause of the information or complaint has arisen ;
“ Such right of appeal shall be subject to the conditions
“ following :

Conditions of appeal.

Time for Appeal.

“ 1. If the conviction or order be made more than twelve
“ days before the sittings of the court to which the appeal
“ is given, such appeal shall be made to the then next sittings
“ of such court ; but if the conviction, or order, be made
“ within twelve days of the sittings of such court then to
“ the second sittings next after such conviction or order :

Notice to or for prosecution.

“ 2. The person aggrieved shall give to the prosecutor or
“ complainant, or to the convicting Justice or one of the
“ convicting Justices, for him, a notice in writing of such
“ appeal, within four days after such conviction or order ;

Persons so appealing to remain in custody, or give security, or in certain cases to deposit money as security.

“ 3. The person aggrieved shall either remain in custody
“ until the holding of the Court to which the appeal is given
“ or shall enter into recognizance, with two sufficient sureties,
“ before a Justice or Justices of the Peace, conditioned
“ personally to appear at the said Court, and to try such
“ appeal, and to abide the judgment of the Court thereupon,
“ and to pay such costs as shall be by the Court awarded ;
“ or if the appeal be against any conviction or order, whereby

“ only a penalty or sum of money is adjudged to be paid.
“ the person aggrieved may, (although the order direct im-
“ prisonment in default of payment,) instead of remaining in
“ custody as aforesaid, or giving such recognizance as afore-
“ said, deposit with the Justice or Justices convicting or
“ making the order such sum of money as such Justice or
“ Justices deem sufficient to cover the sum so adjudged to
“ be paid, together with the costs of the conviction or order,
“ and the costs of the appeal; and upon such recognizance
“ being given, or such deposit made, the Justice or Justices
“ before whom such recognizance is entered into, or deposit
“ made, shall liberate such person if in custody;

*Court to hear and determine the appeal. if the conviction
or order is affirmed.*

If quashed.

Power to adjourn proceedings.

“ And the Court to which such appeal is made shall
“ thereupon hear and determine the matter of appeal, and
“ make such order therein, with or without costs to either
“ party, including costs of the Court below, as to the Court
“ seems meet; and, in case of the dismissal of the appeal or
“ the affirmance of the conviction or order, shall order and
“ adjudge the offender to be punished according to the con-
“ viction, or the Defendant to pay the amount adjudged by
“ the said order, and to pay such costs as may be awarded;
“ and shall, if necessary, issue process for enforcing the judg-
“ ment of the court; and in any case where, after any such
“ deposit has been made as aforesaid, the conviction or order
“ is affirmed, the Court may order the sum thereby adjudged
“ to be paid, together with the costs of the conviction or
“ order, and the costs of the appeal, to be paid out of the
“ money deposited, and the residue, if any, to be repaid to

“ the Defendant ; and in any case where, after any such
“ deposit, the conviction or order is quashed, the Court shall
“ order the money to be repaid to the Defendant ; and the
“ said court shall have power, if necessary, from time to
“ time, by order endorsed on the conviction or order, to
“ adjourn the hearing of the appeal from one sittings to
“ another, or others, of the said Court ;

Memorandum of quashing to be made. Its effect.

“ In every case where any conviction or order is quashed
“ on appeal as aforesaid, the Clerk of the Peace or other
“ proper officer shall forthwith endorse on the conviction or
“ order a memorandum that the same has been quashed ; and
“ whenever any copy or certificate of such conviction or
“ order is made, a copy of such memorandum shall be added
“ thereto, and shall, when certified under the hand of the
“ Clerk of the Peace, or of the proper officer having the
“ custody of the same, be sufficient evidence in all Courts
“ and for all purposes, that the conviction or order has been
“ quashed.”

Section 71 repealed.

2. Section seventy-one of the said Act is repealed
and the following substituted therefor :

No conviction approved may be removed by certiorari, &c.

“ 71. No conviction or order affirmed, or affirmed and
“ amended in appeal, shall be quashed for want of form, or
“ be removed by certiorari into any of Her Majesty's Superior Courts of Record ; and no warrant or commitment
“ shall be held void by reason of any defect therein, provided
“ it be therein alleged that the party has been convicted,
“ and there be a good and valid conviction to sustain the
“ same.”

Recital.

At what times and to whom the Returns required by Sec. 76 shall be made.

What cases any such return shall include: how posted up and published, &c.

Copy to Minister of Finance.

Provisions of Sec. 78 to apply.

3. And whereas, in some of the Provinces of Canada, the terms or sittings of the General Sessions of the Peace or other Courts to which, under section seventy-six of the said Act, Justices of the Peace are required to make Returns of convictions had before them, may not be held as often as once in every three months; and it is desirable that such Returns should not be made less frequently: Therefore it is further enacted, that the Returns required by the said seventy-sixth section of the Act hereinbefore cited shall be made by every Justice of the Peace quarterly, on or before the second Tuesday in each of the months of March, June, September and December in each year, to the Clerk of the Peace or other proper officer for receiving the same under the said Act, notwithstanding the General or Quarter Sessions of the Peace of the County in which such conviction was had may not be held in the months or at the times aforesaid: and every such Return shall include all convictions and other matters mentioned in the said section seventy-six, and not included in some previous Return, and shall, by

the Clerk of the Peace or other proper officer receiving it, be fixed up and published, and a copy thereof shall be transmitted to the Minister of Finance, in the manner required by the eightieth and eighty-first sections of the said Act; and the provisions of the seventy-eighth section of the said Act, and the penalties thereby imposed, and all the other provisions of the said Act, shall hereafter apply to the Returns hereby required, and to any offence or neglect committed with respect to the making thereof, as if the periods hereby appointed for making the said Returns had been mentioned in the said Act instead of the periods thereby appointed for the same.

New form of Notice of Appeal.

4. The Form following shall be substituted for the form of Notice of Appeal against a conviction or order contained in the Schedule to the said Act.

GENERAL FORM OF NOTICE OF APPEAL AGAINST A CONVICTION OR ORDER.

To C. D. of, &c., and (the names and additions of the parties to whom the notice of appeal is required to be given.)

Take notice, that I, the undersigned A. B., of do intend to enter and prosecute an appeal at the next General Quarter Sessions of the Peace (or other Court, as the case may be,) to be holden at , in and for the District (or County, United Counties, or as the case may be) of against a certain conviction (or order) bearing date on or about the day of instant and made by (you) C. D., Esquire, (one) of Her Majesty's Justices of the Peace for the said District (or County, United Counties, or as the case may be) of , whereby the said A. B. was convicted of having or was ordered to pay (here state the offence as in the conviction, informations, or summons, or the amount adjudged to be paid, as in the order, as correctly as possible.)

Dated this day of , one thousand eight hundred and A. B.

MEMORANDUM.—If this notice be given by several Defendants, or by an Attorney, it can easily be adapted.

REMARKS.

The amendments made by this Act are the following:

1. Under s. 65 of 32 & 33 Vic., c. 31, appeals were allowed (when not otherwise provided in the special Act under which the conviction was made) only

1^o Where the sum adjudged to be paid, exceeded ten dollars.

2^o Where the imprisonment exceeded one month.

3^o Where the conviction took place before, or the order was made by, one Justice alone.

Under the substituted clause these restrictions have been swept away, and an appeal is allowed in every case where it is not otherwise provided by the special Act under which the conviction takes place, or the order is made.

Courts of Appeal.

In Ontario and Quebec no change has been made in the Court of Appeal.

In Nova Scotia, the Supreme Court, in the County where the cause of the information or complaint has arisen, has been substituted for its next term or sitting as such Court of Appeal; and in New Brunswick the County Court of such County replaces a Judge of the Supreme Court or of the County Court as a tribunal to which such appeals are to be taken.

In all the Provinces the practice is assimilated, the appeal being given to the first sitting of the Court of Appeal after the expiration of twelve days from the making of the conviction or order appealed from.

Power under the substituted section is given to adjourn the hearing of the appeal from one sitting to another or orders of the Court of Appeal.

The form of the notice of appeal is also changed, it can now be served on one of the convicting Justices for the prosecutor, and there is no necessity of setting out therein the grounds of appeal.

The substituted 71st section prohibits the quashing or removal by certiorari of convictions or orders affirmed, or affirmed or amended in appeal, thereby removing the general prohibition applying to all convictions and orders under s. 71 repealed, the new section does not apply to convictions or orders not appealed from.

s. 3 of the new Act does not require any explanation.

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